

S. HRG. 113-626

**“STAND YOUR GROUND” LAWS: CIVIL RIGHTS  
AND PUBLIC SAFETY IMPLICATIONS OF THE  
EXPANDED USE OF DEADLY FORCE**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON CONSTITUTION,  
CIVIL RIGHTS AND HUMAN RIGHTS

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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TUESDAY, OCTOBER 29, 2013

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**Serial No. J-113-35**  
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Printed for the use of the Committee on the Judiciary



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**“STAND YOUR GROUND” LAWS: CIVIL RIGHTS  
AND PUBLIC SAFETY IMPLICATIONS OF  
THE EXPANDED USE OF DEADLY FORCE**

**TUESDAY, OCTOBER 29, 2013**

U.S. SENATE, SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND HUMAN RIGHTS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10 a.m., in Room SH-216, Hart Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Blumenthal, Hirono, Cruz, Graham, and Cornyn.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S.  
SENATOR FROM THE STATE OF ILLINOIS**

Chairman DURBIN. This hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order.

Today's hearing is entitled “‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force.” We have a large audience in the room today. At the outset, I want to note that the Senate rules prohibit any signs of approbation or disapprobation, which would include outbursts, clapping, or demonstrations.

If there is someone who wishes to be witness to this hearing and cannot attend it in this room, there is another room available, Room 226 in the Dirksen Building.

I will begin by providing opening remarks and then give my Ranking Member, Senator Cruz, an opportunity before we turn to our witnesses.

The debate over “stand your ground” laws raises fundamental questions about self-defense in the United States of America.

In recent years, we have seen a dramatic increase in laws expanding the situations in which a person can legally use deadly force in response to a perceived threat. Florida passed the first of this new wave of “stand your ground” laws in 2005.

Prior to 2005, Florida law held that a person outside his home could not use deadly force and then claim self-defense if the person could have safely avoided the confrontation. This “duty of safe retreat” sought to prevent public disputes from escalating into violence.

But the gun lobby pushed to change Florida's law so people could shoot someone who threatened them without first trying to avoid a confrontation.

Florida was not the first State to adopt this “stand your ground” principle, but Florida’s 2005 law expanded the principle in several dramatic new ways:

First, the law grants criminal and civil immunity for uses of deadly force in “stand your ground” situations.

Second, it replaces a defendant’s burden of proving reasonableness with a presumption of reasonableness when the defendant shoots anyone who intrudes upon his home, porch, or vehicle.

Third, it even allows the use of deadly force when a threat is not imminent.

The gun lobby wanted to spread Florida’s law across the Nation, so the National Rifle Association went to ALEC, the American Legislative Exchange Council, and asked for their help.

Now, ALEC is an organization that brings corporate lobbyists and State legislators together for conferences. They draft model bills, and then they work to get them enacted.

In 2005, ALEC adopted model legislation that was nearly identical to Florida’s law. They then began promoting it in statehouses across the country. Within a year, 13 more States passed similar laws. Today 25 States, not counting Florida, have passed a law based in whole or in part on the ALEC model.

ALEC called the enactment of these laws one of “ALEC’s successes.” CNN described ALEC as being “behind the spread of stand your ground laws.” The *Wall Street Journal* said ALEC was a “key advocate” for them.

Now that ALEC-style “stand your ground” laws are in effect for over half of the United States, we are seeing their national impact when it comes to public safety and civil rights. This is what we will learn from our witnesses today:

These “stand your ground” laws have led to increases in homicides and firearm injuries—including 600 additional homicides per year—with no deterrent effect on crimes like robbery or assault. This point was made in several studies, including recent research from Texas A&M University.

Second, these “stand your ground” laws have allowed shooters to walk free in shocking situations—shootouts between rival drug gangs, drug deals gone bad, and more. This point will be made effectively by the testimony of David LaBahn, president and CEO of the Association of Prosecuting Attorneys.

Third, in some devastating cases, the laws have emboldened those who carry guns to initiate confrontations which have ended up killing unarmed children. The testimonies of Sybrina Fulton and Lucia McBath about the devastating losses of their sons make that point more effectively than I ever could.

Finally, these “stand your ground” laws increase racial disparities in our criminal justice system. One study found that in “stand your ground” States nearly 17 percent of homicides involving white shooters and black victims were ruled justified, compared to one percent of homicides with black shooters and white victims. At my request, the Congressional Research Service analyzed FBI data on justifiable homicides before and after the 2005 wave of “stand your ground” laws and found that racial disparities clearly increased. I will be putting this CRS memo in the record.

[The information referred to appears as a submission for the record.]

Chairman DURBIN. It is clearly time for “stand your ground” laws to be carefully reviewed and reconsidered. Whatever the motivation behind them, it is clear that these laws often go too far in encouraging confrontations that escalate into deadly violence. They are resulting in unnecessary tragedies, and they are diminishing accountability under our justice system.

I am pleased that the efforts to reconsider these laws are now underway. Earlier this month, one of the legislators who drafted Florida’s law joined with some of its chief opponents in a bipartisan effort to change the law. Changes have been passed in a State Senate Committee in Florida.

There is more that needs to be done. But we seem to be moving past the question of whether “stand your ground” laws should be fixed. Now we should be looking at the best way to fix them. I urge other States that have “stand your ground” laws to revisit them as well.

To the extent that “stand your ground” laws were passed based on the ALEC model, I would note that few who are connected with ALEC appear wedded to that model today.

I reached out to every company and organization that has been publicly listed as a member or sponsor of ALEC since 2005, simply asking them, “Do you support the ‘stand your ground’ bill?” One hundred forty of them responded; only one said yes. Even ALEC, through a Connecticut State representative and its Chairman, Mr. Piscopo, made a statement to the press that ALEC no longer has a policy on “stand your ground” laws.

It is also important that Congress review “stand your ground” laws because of the way proposed federal legislation implicates those laws.

Just this past April, 57 Senators voted for a gun lobby amendment that would allow a person who receives a concealed-carry permit in one State to carry his gun in every State—even if the person would be disqualified from getting a permit in other States because of criminal convictions, inadequate training, or other factors.

Congress should think carefully about how proposals like this would mix with “stand your ground” laws.

Today we have before us a distinguished lineup of witnesses who will talk about the impact of “stand your ground” laws on public safety, civil rights, and American families, and ways that we should work to fix them. I look forward to their testimony.

[The prepared statement of Senator Durbin appears as a submission for the record.]

I now recognize the Ranking Republican Member, Senator Cruz.

**OPENING STATEMENT OF HON. TED CRUZ, A U.S. SENATOR  
FROM THE STATE OF TEXAS**

Senator CRUZ. Thank you, Mr. Chairman. Thank you to the witnesses who have come here this morning. Thank you to everyone who has come to join this hearing on a very important topic. I would like to talk about three different issues concerning “stand your ground” legislation.

The first is the difference between serious efforts to stop violent crime and efforts to advance a political agenda. I have spent much of my adult life working in law enforcement and emphatically agree that law enforcement should be vigorous going after violent crime, protecting the innocent, protecting those who are preyed upon by violent criminals. Indeed, one of my most significant criticisms of this administration's enforcement of justice is that they have not made prosecuting gun crimes a priority.

In 2010, over 48,000 fugitives, felons, and other prohibited purchasers attempted to illegally purchase a firearm, and yet out of over 48,000, this administration prosecuted only 44 of them. In my view, that is utterly indefensible. If you have felons and fugitives attempting to purchase illegal firearms, we should be going after, investigating, and prosecuting each of those cases.

Let me reiterate. Out of over 48,000, this Justice Department prosecuted only 44.

Likewise, the prosecution of violent gun crimes has dropped significantly from a high of over 11,000 in 2004 to a low in 2012 of 7,774, which is a 29-percent decline. If we were to put action to all of the rhetoric given about stopping violent crime, we would again put priorities to prosecuting those who commit crimes with guns.

Unfortunately, there are many in Washington who seem more driven by advancing a political agenda than actually putting in place common-sense steps to stop violent crime.

That leads to the second point I want to make, which is that in our Federalist system, criminal law is primarily given to the States to enforce, and State self-defense law is not in our constitutional system the responsibility of the Federal Government. The Federal Government does not have the jurisdiction, does not have the constitutional authority to determine what the substantive criminal law should be in each of our 50 States. And, indeed, it is quite fitting with the Founders' design that each of those 50 States would make different judgments, different decisions based on the values and mores of their citizens. And so that does raise the question as to the purpose of this hearing. If it is not within Congress' jurisdiction to legislate substantive State criminal law, it raises whether there may perhaps be a broader political agenda behind the hearing instead.

The third point I would make is that self-defense is a bedrock liberty of every American, and I would note this is not a new concept. Indeed, the U.S. Supreme Court in *District of Columbia v. Heller* stated, "The inherent right of self-defense has been central to the Second Amendment right."

Now, some who get their news from the modern news media may believe that was a new creation of the modern Court. I would note that that idea has been around from the founding of this Nation. Indeed, Justice Harlan for a unanimous Supreme Court in 1895 stated the following: "He was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury."

The Declaration of Independence begins with the right of life, liberty, and the pursuit of happiness given by our Creator to each of us. And if an individual is confronted by a violent aggressor, the right of self-defense is an inherent right in each of us. And the notion that critics of these laws put forth that if you are attacked on the street by a violent attacker, you are obliged to turn and run rather than to defend yourself is a notion that is contrary to hundreds of years of our jurisprudence and to the rights that protect all of us.

I would note also that the Chairman suggested a racial disparity. Look, the problem of violent crime in this country is enormous, and tragically, minority communities bear much of the cost of violent crime. Minorities find themselves at times aggressors, but often victims of violent crime. And I would note, in Florida, the data show that African American defendants have availed themselves of the “stand your ground” defense more frequently than have Anglo defendants.

According to press reports, 55 percent of African American defendants have successfully invoked the “stand your ground” defense in prosecutions compared to a 53-percent rate in the Anglo population.

This is not about politicking. This is not about inflaming racial tensions, although some might try to use it to do that. This is about the right of everyone to protect themselves, to protect their family. And I will tell you, given a choice in a confrontation between a violent aggressor attacking an innocent civilian, I for one will always, always, always stand with the innocent civilian.

Now, we have a system of justice to determine if that is the facts in any particular circumstance. But, notably, the “stand your ground” defense only applies when it is a violent aggressor attacking an innocent defender. If it is not, the defense does not apply. So this is a rule that only applies to protect innocent victims from violent aggressors, and I find the notion that we say if you and your family are attacked on the public street, you do not have the right to defend yourself, I find that an astonishing proposition and one that I certainly hope Members of the U.S. Senate will not advocate.

Chairman DURBIN. We will turn to our first witness panel. I want to welcome Congresswoman Marcia Fudge, Congressman Luis Gутьe Elrrez, and Congressman Louie Gohmert. Thank you for being here. You will each have five minutes to make a statement, and if you have a written statement, we will include it in the record.

The first person to speak is Congresswoman Marcia Fudge. She represents the 11th Congressional District of Ohio, currently serving her third term. In 2012, Congresswoman Fudge was unanimously elected by her colleagues and serves as the Chair of the Congressional Black Caucus in the 113th Congress. She is a Member of the House Committee on Agriculture, where she is Ranking Member on the Subcommittee on Department Operations Oversight, and the Committee on Education and Workforce.

Congresswoman Fudge, thank you for being here today, and please proceed.

**STATEMENT OF HON. MARCIA L. FUDGE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF OHIO**

Representative FUDGE. Thank you very much, and good morning. Thank you, Chairman Durbin and Ranking Member Cruz.

I would just say that it is interesting that the Ranking Member believes in State rights when it favors his position. You cannot have it both ways. Either the Justice Department is over prosecuting persons who buy guns illegally in States, and if they are, then they should also be over “stand your ground” laws.

I would like to focus on three issues that have serious implications to the public safety of our country: “stand your ground” laws, concealed-carry laws, and racial profiling.

On February 26, 2012, a young man lost his life, in my opinion, due to racial profiling. Earlier this year, Trayvon Martin’s killer, George Zimmerman, escaped the grip of justice because of Florida’s concealed-carry and “stand your ground” laws.

The three issues that I highlight today all manifest themselves in the senseless death of too many young men, including Jordan Davis, who was killed for playing music too loud in his car. Trayvon and Jordan did not ask to be martyrs. The American legal system made them martyrs.

I thank Sybrina Fulton and Lucia McBath for being here today. Your strength is inspiring.

I fully understand the right to defend oneself from violence as an established principle in our legal system. However, “stand your ground” laws eliminate all responsibility to retreat and peacefully end an incident. These laws permit and, quite frankly, encourage individuals to use deadly force even in situations where lesser or no physical force would be appropriate.

At the urging of ALEC and the NRA, the first “stand your ground” law was enacted in Florida in 2005. Since then, 22 other States have enacted similar laws. The NRA and ALEC actively lobbied States to lower the personal liability and social responsibility for those who carry firearms. Ultimately, this effort fosters a Wild West environment in our communities where individuals play the role of judge, jury, and executioner.

In my home State of Ohio, House bill 203 would expand the concealed-carry law to permit the use of lethal force wherever an individual is legally permitted to be while removing the duty to retreat. This change to current law would bring Ohio in line with other “stand your ground” States.

Proponents of “stand your ground” laws often allege that these laws deter crime. However, the opposite is true. According to a study by the University of Texas A&M, States with “stand your ground” laws have seen an eight percent increase in homicides. The enforcement of “stand your ground” laws too often relies on the decisions of those with cultural biases on whether a person’s life is in danger.

Not surprisingly, these decisions have had a disparate impact on African Americans. The Urban Institute’s Justice Policy Center found that in “stand your ground” States, 35.9 percent of shootings involving a white shooter and a black victim are found to be justified. Only 3.4 percent of cases involving a black shooter and a

white victim are considered justifiable self-defense. These numbers should make all of us uncomfortable, Mr. Chairman.

Racial profiling continues to make communities of innocent individuals fear a system designed to protect them. Under New York's unconstitutional stop-and-frisk policy, more than 90 percent of all those stopped by police were either black or Latino, even though these groups only make up 52 percent of the city's population.

Given the underlying taint of racial profiling in both our culture and criminal justice system, it is troubling to see more States trend toward enacting "stand your ground" laws. The Center for American Progress' report, "License to Kill," shows the intersection between "stand your ground" laws and weak State gun permitting laws. While every State has concealed-carry laws, they differ on eligibility requirements. There must be a strong, uniform standard to allow an individual to carry a deadly weapon.

Weak concealed-carry standards combined with "stand your ground" laws and racial profiling are a recipe for danger. We in Congress must continue to work with the Department of Justice to monitor and evaluate the impact of these three issues. And until these unjust and inherently biased laws are repealed, we have a responsibility to advocate and to educate.

Our work will not be complete until we ensure that no one has to live with the fear of death based on his race or his age or a death that is justified under "stand your ground" laws. I look forward to the day when every American can live knowing that the arc of justice bends toward fair and unbiased laws.

I yield back.

Chairman DURBIN. Thank you, Congresswoman.

Next up is my colleague, Congressman Luis Gutiérrez, from Illinois. He is now in his 11th term representing the Illinois Fourth Congressional District, Chair of the Congressional Hispanic Caucus, Immigration Task Force, and leader in an effort to pursue comprehensive immigration reform. In addition, he serves on the House Judiciary Committee and the House Permanent Select Committee on Intelligence.

Congressman Gutiérrez, thank you for joining us today.

**STATEMENT OF HON. LUIS V. GUTIÉRREZ, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF ILLINOIS**

Representative GUTIÉRREZ. Thank you, Chairman Durbin and Ranking Member Cruz. Thank you for the opportunity to testify on this extremely important issue.

I extend my condolences to the families who lost loved ones. Ms. Fulton and Ms. McBath, I am deeply sorry for your loss, and I appreciate your presence here today. And as one dad to another, I say to Mr. Martin that I, too, feel your pain, and thank you for being here.

As a parent, I was shocked by the death of Trayvon Martin, and the fact that no one was even arrested after it happened, an unarmed teenager was pursued by an armed adult in the neighborhood where he was staying, shot to death and nobody was convicted of a crime.

I respect the verdict and the judicial process, but I have deep concerns about the expansion of self-defense laws, the proliferation

of guns, the weakening of gun laws, and how this affects public safety.

The case of Trayvon Martin, like the Sandy Hook massacre, should have sparked a response from our Nation's lawmakers. Mr. Chairman, I, too, requested hearings on this matter as a Member of the House Judiciary Committee but received no response from the Chairman.

Examining the "stand your ground" laws and whether they make our communities safer or less safe is critically important as part of a larger examination of the impact of gun violence on America. Sadly, we lose a classroom full of kids every day to gun violence across this country, and there have been no hearings in the House. So, Senator Durbin, I applaud you for your leadership and for holding this hearing.

The fundamental problem is Americans are so afraid of other Americans that they feel they must arm themselves. The gun lobbyists are pursuing to reshape our laws to make this practice more socially and legally acceptable. Special interests are relaxing our laws, resulting in an escalation of the deadliness of these confrontations.

I have never believed that allowing more guns will mean less gun violence. We must confront the deadly combination of rampant fear of one another and easily available guns. We must examine "shoot first" or "stand your ground" laws in this context.

In 22 States, "stand your ground" laws expand the use of deadly force outside your home to any place you have a legal right to be. We seem to have made it a decision that it is acceptable to use a weapon on another human, but have failed to have a serious conversation about under what circumstances. Under "shoot first" laws, a person is presumed to have a reasonable fear of death that justifies the use of deadly force in many places. In some States, there is also immunity from civil liability, criminal prosecution, and even arrest.

I grew up in Chicago in a very different era. When scuffles broke out, it was up to us to protect ourselves. But no one had Glocks and no one had AR-15s back then. New concealed-carry laws and "shoot first" laws are a recipe for more dead sons and daughters.

The GAO estimated last year that approximately eight million permits for concealed weapons were issued in the United States. Illinois has become the 50th State to allow concealed weapons. As a father, and as a grandfather of a 10-year-old, I strongly oppose proposals to allow national reciprocity for concealed weapon laws issued by States with fewer safeguards than those in my own State of Illinois where my grandson resides.

For the safety of all of our loved ones, we must take every reasonable precaution to ensure that individuals who are violent or a public threat do not have easy access to weapons. That is why I have introduced legislation this year to ban cheap junk guns used disproportionately in the commission of crimes.

But legislation is only part of the solution. In Chicago, we continue to develop strategies to reduce violence and target at-risk youth. Teaching our kids how to resolve conflicts without pulling a trigger makes more sense. Instead, the gun lobby is pursuing "shoot first" laws and claiming they deter crime. The truth is these



laws increase murder rates. Researchers at Texas A&M found “shoot first” States have an eight percent increase in homicides relative to other States, translating to 600 additional parents, children, and friends killed every year.

Moreover, “shoot first” laws exacerbate the mistrust of the police among minority communities. There is a widespread feeling in poor and working-class communities that the police are there to protect people from them, not to protect them from other people. That trust further deteriorates under “shoot first” laws when communities question whether racial stereotypes or biases will enter into a subjective determination that someone had a reasonable fear.

When we allow people to take the law into their own hands, when police hesitate to make an arrest when a young person of color is killed, or if we turn cops into immigration agents, like the House Judiciary Committee’s proposal in the *SAFE Act*, public safety suffers.

Engaging in this dialogue is a critical first step. Congress should guide this discussion, carefully monitor the application of these laws, and watch out for racial disparities.

I want to thank Senator Durbin for his leadership and for his service to Illinois and for the opportunity to testify. And last, Mr. Chairman, I would ask that the “End ‘stand your ground’ in Illinois” editorial in the *Chicago Sun-Times* be entered into the record.

Chairman DURBIN. Without objection, it will be added to your testimony. Thank you, Congressman Gutiérrez.

[The editorial appears as a submission for the record.]

Chairman DURBIN. Our next witness is Congressman Louie Gohmert. He represents the First Congressional District of Texas. He is in his fifth term in the House. He is a Member of the House Judiciary Committee where he serves as Vice Chair on the Subcommittee on Crime, Terrorism, and Homeland Security. He is also a Member of the Committee on Natural Resources.

Congressman Gohmert, please proceed.

#### **STATEMENT OF HON. LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative GOHMERT. Thank you, Chairman Durbin, Ranking Member Cruz, Members of the Committee. I am before you as someone who has a heavy heart for every victim of crime, especially violent crime. I come before you today as someone who has been involved in successfully prosecuting murder. I have defended a man who happened to be African American of murder in which he was acquitted using self-defense, having killed a naked man.

I have successfully appealed appropriately and have gotten a capital murder conviction reversed in which the defendant happened to be African American.

I have presided over many murder trials as a judge. As a chief justice, I have reviewed murder trials on appeal. So I am somewhat familiar with the process involved with murder and assault trials.

Though I have won an award for a *Law Review* article I wrote, I have won Baylor Law School’s moot court competition, won Best Brief Award along with others, perhaps the highest commendation I have ever had came from now-Senator Ed Markey, who, after a House hearing, approached me and said he wanted to pay me a

compliment, that if he were ever arrested, he wanted me to defend him. And he said that was a compliment, and I took it as such.

Now, regarding the issue of self-defense, as my friend Senator Cruz pointed out, it was in 1895, *Beard v. United States*, the Court said, Justice Harlan, the person "was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground . . . ." This concept has been around for a long time.

Some feel that there should be a duty to retreat before deadly force can be utilized for self-protection. But some have found that, without a duty to retreat, there are fewer assaultive crimes with due deference to Texas A&M. In most places, a deadly weapon does not necessarily have to be present if the victim is in reasonable fear of death or serious bodily harm, worded in different ways.

That idea of being able to stand one's ground without first retreating has been combined as part of the law of self-defense in at least 22 States. It might also be noted that these 22 are not necessarily States in which runaway murder rates abound, as they do in some locations where the self-defense is more limited or where gun control laws are most extreme, as in Washington, DC, or Chicago, Illinois.

Florida and other States have used their right to be the source of police powers, which was secured to them under the Tenth Amendment of the Constitution, because those powers were not delegated to the Federal Government and were, therefore, reserved to the States and the people. That is why States have the right to have their own penal codes, to enact their own laws of self-defense, which laws get tweaked from time to time as necessary.

In some States, the doctrine of protecting one's home affords more protection to the homeowner than in other States. In some States, one may stand his ground without retreating wherever he is lawfully located. However, unless the Uniform Code of Military Justice or other federal nexus is clearly present, all of this is up to the State legislatures to make these determinations as they see fit for their citizens. Without a federal nexus, such laws are up to the individual States.

The idea that States are less intelligent or less able to discern their citizens' needs is a mistake of federal proportions. Only a Congress that has authorized the spending of over 150 percent more than it brings in would have the nerve to tell State governments that balance their budget every year that the State does not know how to properly govern their people. With only a few exceptions, most States are doing quite well with legislating in the area of criminal law without our interference. It is only the Federal Government that has an estimated 5,000 or so criminal laws that have overcriminalized this country. Hopefully when I am here again for a hearing, we can fervently work toward eliminating or correcting the thousands of federal laws that have sometimes put people behind bars for things that most Americans have no clue would be against the criminal law.

So, Senators, I humbly implore you, let us leave State criminal law to the consideration of the State legislatures, though we in Congress would probably be well served to take advice from the States that are still solvent.

Thank you.

Chairman DURBIN. Thank you, Congressman Gohmert, and I want to thank your colleagues, Congressman Gutierrez and Congresswoman Fudge, for their testimony as well. We appreciate your being here today, and we are going to proceed to the second panel as you depart. Thank you again.

Chairman DURBIN. I am sorry. If I can ask you all please to stand, it is customary to administer the oath before this Committee. If you would please raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. FULTON. I do.

Mr. SULLIVAN. I do.

Mr. LABAHN. I do.

Mr. SHAPIRO. I do.

Mr. LOTT. I do.

Ms. MCBATH. I do.

Chairman DURBIN. Thank you. Let the record reflect that the witnesses, all witnesses on the second panel, answered in the affirmative.

Each witness will be given five minutes for an opening statement. Of course, any written statement they would like to submit for the record will be admitted without objection.

Our first witness is Sybrina Fulton. Ms. Fulton is the mother of Trayvon Martin. Her son was shot and killed at the age of 17 on the night of February 26, 2012, in Sanford, Florida. Sybrina and Trayvon's father, Tracy, have co-founded the Trayvon Martin Foundation to create awareness of how violent crime impacts the families of victims and to provide support and advocacy for those victims. Ms. Fulton is a graduate of Florida Memorial University.

Thank you so much for coming here today, Ms. Fulton, and please proceed with your testimony.

#### **STATEMENT OF SYBRINA FULTON, MIAMI, FLORIDA**

Ms. FULTON. Thank you so much for just taking the time to listen to what not only I have to say but the rest of the people that are testifying as well.

By nature, I am a mother of two boys, and I still support both my sons. Although Trayvon is not with us, it is very important that I try to make a change for not only my older son, Jahvaris, which is still here on Earth, but also Trayvon.

It is unfortunate what has happened with Trayvon, and that is why I feel like it is so important for me to be here so that you all can at least put a face with what has happened with this tragedy.

Trayvon had recently turned 17 years old. He had only been 17 for three weeks. We celebrated his 17th birthday on February 5, and he was murdered on February 26. So he had only been 17 for three weeks.

It is very hurtful to know that Trayvon was only simply going to the store to get snacks, nothing more, nothing less. It is important to keep that in mind because teenagers like to be independent at times, and he was simply going to get a drink and some candy. That tells me right there his mentality. That tells me that he was

not going to get cigarettes or bullets or condoms or other items of that nature. He was going to get a drink and candy.

Trayvon was minding his own business. He was not looking for any type of trouble. He was not committing any crime. And that is important to remember that the things that surround the tragedy that happened are most important.

At the time that this happened to him, he was on a telephone call with a young lady from Miami. That shows his mentality. That shows that he was not looking for trouble. He was not the criminal that some people have tried to make him out to be. He was not the criminal that the person who shot and killed him thought that he was. He was simply on the cell phone talking to a young lady in Miami, with candy and a drink.

As I think about this as a mother and I think about how many kids walk to the store and how many kids now feel that they cannot be safe in their own community, I think about what kind of message we are sending as parents, as lawmakers, as elected officials, even as grandparents and aunts and uncles. What kind of message are we sending if our kids—because, remember, these are our kids in our communities—do not feel safe, do not feel safe simply walking to the store to get candy and a drink?

So I just wanted to come here to talk to you for a moment to let you know how important it is that we amend this “stand your ground” because it did not—certainly did not—work in my case. The person that shot and killed my son is walking the streets today. And this law does not work. We need to seriously take a look at this law. We need to seriously speak with the State attorney’s office, the police departments, more attorneys. We need to do something about this law when our kids cannot feel safe in their own community.

Thank you.

[The prepared statement of Ms. Fulton appears as a submission for the record.]

Chairman DURBIN. Ms. Fulton, we are sorry for your loss, and thank you for your courage in coming today, as well as to Trayvon’s father. Thank you very much.

Our next witness is Professor Ronald Sullivan. He is a clinical professor of law at Harvard Law School where he serves as faculty director of the Harvard Criminal Justice Institute and the Harvard Trial Advocacy Workshop. He previously taught at Yale Law School and served as director of the Public Defender Services in the District of Columbia. He received his B.A. from Morehouse College and his law degree from Harvard.

Professor Sullivan, thanks for being here, and please proceed.

**STATEMENT OF RONALD S. SULLIVAN, JR., CLINICAL PROFESSOR OF LAW, DIRECTOR, CRIMINAL JUSTICE INSTITUTE, AND DIRECTOR, TRIAL ADVOCACY WORKSHOP, HARVARD LAW SCHOOL, CAMBRIDGE, MASSACHUSETTS**

Mr. SULLIVAN. Thank you very much. Good morning, Chairman Durbin and Ranking Member Cruz and Members of the Committee. Let me also join the Chair and others in sharing and offering my condolences for your loss, Ms. Fulton.

In order to properly understand “stand your ground” laws, we must first appreciate the broader context in which they exist. First and most important, it is axiomatic that sanctity of human life is a central and animating value in our legal system. This, I trust, is not a particularly controversial claim. Dating back to our law’s Judeo-Christian origins, interpreters and courts alike have recognized that human life is sacred, and those who would extinguish human life carry a heavy burden in order to justify such an act.

“Stand your ground” laws, like all self-defense laws, require this heightened showing of necessity. The particular version of “stand your ground” laws which began with Florida’s 2005 law differs drastically from other “stand your ground” laws and from the common law of self-defense in three important respects.

First, these laws remove the common law duty to retreat. This has the result of emboldening individuals to escalate confrontation as opposed to an alternative rule which would de-escalate confrontation. And the duty to retreat implies a duty to safely retreat.

Second, these laws shift the legal presumption regarding reasonableness of one’s fear. Under a Florida-type law, the actor is presumed to be reasonably in fear of imminent death if he is in his home or automobile, and this presumption abrogates the need for someone who is responsible for a homicide to affirmatively demonstrate the necessity of taking another human life.

Third, these laws provide immunity from criminal arrest and civil liability. This has the unintended effect of encouraging the very sort of vigilantism that normal and ordinary law prevents. In my written testimony, I discuss all of these issues at length. I also analyze at length the extant empirical evidence, and I conclude that the data is not sufficiently robust to make a causal claim in either direction.

So to say that “stand your ground” laws increase or decrease the incidence of crime, I think there are correlations there. I have not found strong causal evidence. But the weight of the evidence strongly points to the conclusion that “stand your ground” has little, if any, impact on homicide reduction, and the promulgation of these laws appears to correlate with an increase in certain types of violent crimes.

Now, time does not permit me here to go into more detail, but I will make some observations about the Trayvon Martin case.

Mr. Zimmerman’s acquittal was made possible because Florida’s “stand your ground” laws and its concealed weapons laws conspired to create the perfect background conditions for his exoneration. These laws permitted Mr. Zimmerman to carry a loaded firearm, to disregard the clear directive of a 911 dispatcher, to follow and pursue Trayvon, and then stand his ground when young Trayvon reasonably sought to defend himself—and all because, I strongly suspect, that Mr. Zimmerman could not apprehend any lawful reason for a young black male to be walking through his middle-class neighborhood. To Mr. Zimmerman, Martin’s blackness likely served as a crude proxy for criminality.

Now, this unfortunate outcome sends a twofold message. First, it tells Floridians that they can incorrectly profile young black children, kill them, and be protected by “stand your ground” laws. But, second, this decision sends an even more ominous message to

young black children. So I consider myself fortunate to live in a jurisdiction that does not have “stand your ground” laws. But what if it did? I have an African American son who is just shy of his 13th birthday, whose name ironically is Trey. What advice would I give him? I regret the only responsible advice, if I lived in a “stand your ground” jurisdiction, would be that if he ever felt seriously threatened by a stranger, then he would have to use all reasonable force, up to and including legal force, in order to protect himself, because I would rather my Trey be alive and able to argue that he stood his ground than dead and portrayed by lawyers, the media, and, present company excluded, politicians as some stereotypical black male criminal.

This is not a desirable America for anyone, and I do not want my son growing up in such an America. I respectfully suggest that States pass laws that permit police to police and citizens to go about the business of building communities.

Thank you.

[The prepared statement of Mr. Sullivan appears as a submission for the record.]

Chairman DURBIN. Thank you, Professor Sullivan.

Our next witness is David LaBahn. Mr. LaBahn is the president and CEO of the Association of Prosecuting Attorneys, a national association representing elected deputy and assistant prosecutors. Previously he was director of the American Prosecutors Research Institute and executive director of the California District Attorneys Association. He was also a deputy district attorney in Orange and Humboldt counties in California. He is a graduate of Cal State Fullerton and received his J.D. from Western State University.

Mr. LaBahn, please proceed.

**STATEMENT OF DAVID LABAHN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF PROSECUTING ATTORNEYS, WASHINGTON, DC**

Mr. LABAHN. Good morning, Mr. Chairman, Ranking Member Cruz, and Members of the Subcommittee. Thank you for the opportunity to testify before you today. My name is David LaBahn. I am the president of the Association of Prosecuting Attorneys, a private nonprofit whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. APA is the only national organization to represent and include appointed and elected prosecutors, as well as their deputies and assistants. On behalf of APA, I am pleased to have the opportunity to address the issues surrounding this vast expansion of self-defense referred to as “stand your ground.” As prosecutors, we seek to do justice for victims and hold offenders accountable for their actions, especially in cases where a life has been violently ended whether by firearm or other deadly means.

Since 2009, APA has tracked the legislative progression of “stand your ground” and assisted prosecutors who have been working to enforce these expansive new laws. I have attached to my testimony our Statement of Principles regarding “stand your ground” laws. These laws have raised a number of troubling and dangerous concerns.

Prosecutors and their professional associations have overwhelmingly opposed “stand your ground” laws when they were in their respective legislatures. The concerns expressed include the limitation or even elimination of prosecutors’ ability to hold violent criminals accountable for their acts. However, even with this opposition, many States have passed “stand your ground” laws. Many of these laws include provisions that diminish or eliminate the common law “duty to retreat,” change the burden of proof regarding reasonableness to a presumption, and provide civil and criminal immunity. By expanding the realm in which violent acts can be committed with the justification of self-defense, “stand your ground” laws have negatively affected public safety and undermined prosecutorial and law enforcement efforts to keep communities safe. They have undermined standard police procedures, prevented law enforcement from arresting and detaining criminals, stymied prosecutors, deterring them from prosecuting people who claim self-defense even while killing someone in the course of unlawful activity.

In some States, courts have interpreted the law to create a new procedural hurdle in the form of immunity hearings, which effectively transfer the role of the jury over to judge. Moreover, because these laws are unclear, there has been inconsistent application throughout the States and even within respective States. Prosecutors, judges, police officers, and ordinary citizens have been left to guess what behavior is legal and what is criminal. Even with the best efforts to implement these broad measures, defendants, victims’ families and friends, investigators, prosecutors, defense attorneys, trial courts, and appellate courts have been forced into a case-by-case analysis with no legal certainty as to what they can expect once a life has been taken.

“Stand your ground” laws provide safe harbors for criminals and prevent prosecutors from bringing cases against those who claim self-defense after unnecessarily killing others. For example, in a February 2008 Florida case, a drug dealer by the name of Tavarious China Smith killed two men in two separate incidents, the first drug-related, the second over retaliation. Though he was engaged in unlawful activity in both instances, prosecutors had to conclude that both homicides were justified under Florida’s “stand your ground” law. Unfortunately, this example is not an anomaly. A recent study concluded that a majority of defendants shielded by “stand your ground” had arrest records prior to the homicide at issue. “Stand your ground” expansion began in Florida in 2005. It is our position that common law sufficiently protected people’s rights to defend themselves, their homes, and others. The proper use of prosecutorial discretion ensured that lawful acts of self-defense were not prosecuted, and I have not seen evidence to the contrary. After reviewing the legislative history of the Florida provision, the very case used to justify this broad measure involved no arrest or prosecution. The law enforcement community responded properly to the shooting, and the homeowner was never arrested or charged in his lawful exercise of self-defense.

Because the provisions of “stand your ground” laws vary from State to State, I will attempt to summarize some of the provisions which have caused prosecutors difficulty in uniformly enforcing the law.

First, the meaning of “unlawful activity” needs to be clarified. Many States have extended “stand your ground” protection to people who are in a place where they have a right to be and who are not engaged in an unlawful activity. Can a drug dealer defend his open-air drug market? If an individual is a felon, does he have a right to kill another with a firearm?

Second, immunity is rarely granted in criminal law, with the few exceptions existing in order to encourage cooperation with law enforcement and the judicial system. The legislatures should remove the immunity provisions and clarify that self-defense is an affirmative defense.

Third, the replacement of presumptions with inferences will eliminate many of the dangerous effects. This coupled with an objective rather than a subjective standard will improve accountability while protecting the right of self-defense.

Fourth, the statutes should be amended to prevent an initial aggressor from claiming self-defense. Some laws allow a person to attack another with deadly force and later use “stand your ground” to justify killing the person he or she attacked if that person responds with like force and the initial aggressor cannot escape.

Finally, we recommend that the law be limited so that “stand your ground” cannot be raised when the victim is a law enforcement officer, regardless of actual knowledge. Statutes should be amended to read that “stand your ground” should not be applicable against a law enforcement officer while acting within the course and scope of their duties.

Taken together, I believe these reforms to the various “stand your ground” laws will help minimize their detrimental effects and restore the ability of investigators and prosecutors to fully enforce the law and promote public safety, while continuing to respect the rights of law-abiding citizens to protect themselves and their families.

Thank you, Chairman, for holding this hearing, and as I have been sitting here, I do want to reflect the decision to take a life is one of the most solemn decisions any person can ever raise or be faced with. It should not be taken lightly. Policies should not encourage one to violently take the life of another. Once that event occurs, and having prosecuted cases and dealing with the victim’s family here, both lives are forever changed—the individual who chooses to make the decision to take a life as well as the victim’s family.

Thank you.

[The prepared statement of Mr. LaBahn appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. LaBahn.

Our next witness is Ilya Shapiro. He is a senior fellow in constitutional studies at the Cato Institute. Previously he was special assistant/advisor to the Multi-National Force in Iraq on rule-of-law issues and was an attorney in private practice at Patton Boggs. Mr. Shapiro received an undergraduate degree from Princeton, a master’s from the London School of Economics, and a law degree from the University of Chicago Law School. He clerked for Judge Grady Jolly of the Fifth Circuit Court of Appeals.

Mr. Shapiro, please proceed.



**STATEMENT OF ILYA SHAPIRO, SENIOR FELLOW IN CONSTITUTIONAL STUDIES, CATO INSTITUTE, WASHINGTON, DC**

Mr. SHAPIRO. Mr. Chairman, thank you for this opportunity to discuss the right to armed self-defense.

It is most appropriate that this hearing was originally scheduled for September 17th, marking the anniversary of the Constitution's signing. On that day, public schools have to teach about our founding document. My organization, Cato, which thankfully is not publicly funded, celebrates Constitution Day by releasing our "Supreme Court Review." In reality, however, every day is Constitution Day, so please excuse me if I have to leave early to travel to the National Constitution Center in Philadelphia to discuss the constitutional issues attending the debt ceiling debate.

Now, "stand your ground" is tremendously misunderstood. All it does is allow people to defend themselves without having a so-called duty to retreat. That concept has been part of U.S. law for over 150 years. About 31 States, depending how you count, now have some type of "stand your ground" doctrine, the vast majority in common law before legislators took any action. Some, like California and Virginia, maintain it without any legislation still.

Of the 15 States that have passed "stand your ground" since 2005, a majority had Democratic Governors, including Jennifer Granholm, Janet Napolitano, and Kathleen Sebelius. Louisiana and West Virginia passed them with Democratic control of both Houses. Even Florida's supposedly controversial law passed the State Senate unanimously and split Democrats in the House. When Illinois strengthened its longstanding law in 2004, State Senator Barack Obama cosponsored the bill that was then unanimously approved.

Conversely, many so-called red States impose a duty to retreat, and even in more restrictive States, courts have held that retreat is not required when preventing serious crime. Indeed, it's a universal principle that a person can use force when she reasonably believes it necessary to defend against an imminent use of unlawful force. Where there is no duty to retreat, as in most States, she is further justified in using deadly force if she reasonably believes it necessary to prevent death or grave bodily harm. The Florida law is no different.

It's not an easy defense to assert, and it certainly doesn't mean that you can shoot first and ask questions later. These laws are not a license to be a vigilante or behave recklessly. They just protect law-abiding citizens from having to leave a place where they're allowed to be. That's why this debate isn't new.

In ancient Britain, when the deadliest weapons were swords, a duty to retreat greatly reduced blood feuds. British law reflects a "deference to the constabulary," by which the King owed a duty of protection to his subjects. That's obviously not part of our tradition.

Despite what gun prohibitionists claim, the no-retreat rule has deep roots in American law. At the Supreme Court, it dates to the unanimous 1895 case of *Beard v. United States*, which Senator Cruz quoted. In places with a duty to retreat, crime victims can be imprisoned just for defending themselves. That's controversial. A mugger cannot have your wallet, but he can make you leave a public place?

Among those harmed by the duty to retreat are domestic violence victims who turn on their assailants. Feminists thus support “stand your ground” and point out that “you could have run away” may not work when faced with a stalker.

“Stand your ground” laws are thus designed to protect law-abiding citizens. That’s how we have the Castle Doctrine, which essentially all States recognize, most extending the doctrine to public spaces as well. It’s bad enough for an innocent person to find herself threatened by a criminal, but to then have to worry about whether she can retreat lest she face lawsuits is too much to ask.

As the progressive Justice Oliver Wendell Holmes wrote in the 1921 case of *Brown v. United States*, “detached reflection cannot be demanded in the presence of an uplifted knife.” Nearly a century later, we shouldn’t demand more of crime victims.

Of course, any self-defense rule bears the potential for injustice. For example, in a two-person altercation, one may be dead and the other dubiously claim self-defense. These cases, like Trayvon Martin’s, implicate the self-defense justification generally. If George Zimmerman was the aggressor, then he has no self-defense rights at all. If Trayvon attacked Zimmerman, then the only question is whether Zimmerman reasonably believed that he was in danger, not whether he could’ve retreated. And if Zimmerman provoked the confrontation, he lost the protections of the “stand your ground” law.

In short, hard cases make skewed policy debates. This Committee is well familiar with that demagogic dynamic after Sandy Hook. While anti-gun lobbyists have used both that tragedy and Trayvon Martin to pitch all sorts of gun control laws, what they really target is the right to armed self-defense. With “stand your ground” laws, yes, prosecutors need to show evidence to counter claims of self-defense, not simply argue that the shooter should’ve retreated. For those who value due process, which should include historically mistreated minorities, that’s a feature, not a bug.

Finally, I should mention one episode that has contributed to the sensationalism surrounding this debate: the attempt to intimidate organizations with any ties to the American Legislative Exchange Council. Accordingly, I’ve submitted with this statement Chairman Durbin’s letter to that effect and the response by Cato’s president, John Allison.

Thank you for having me. I welcome your questions.

[The prepared statement of Mr. Shapiro appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Shapiro.

Our next witness is John Lott. Mr. Lott is the president of a newly formed organization, the Crime Prevention Research Center. He previously served in research or a teaching position at the University of Chicago and Yale, among other schools. He was the chief economist at the U.S. Sentencing Commission from 1988 to 1990. He is currently a weekly columnist and contributor for FoxNews.com. He received his Ph.D. in economics from UCLA.

Mr. Lott, please proceed.

**STATEMENT OF JOHN R. LOTT, JR., PH.D., PRESIDENT, CRIME PREVENTION RESEARCH CENTER, SWARTHMORE, PENNSYLVANIA**

Mr. LOTT. Thank you very much, Chairman Durbin and Ranking Member Cruz and other distinguished Members. "Stand Your Ground" laws help people to be able to defend themselves. It is the people who are most likely to be victims of violent crime, primarily poor blacks, who benefit the most from having the option to be able to protect themselves.

What has been lost in part of this discussion so far is the reason why States have adopted these laws. Requiring people to retreat as far as possible creates confusion, creates doubt, and can make it more difficult for people to be able to go and defend themselves.

In Florida, blacks make up about 16 percent of the population, but they account for 31 percent of the State's defendants invoking "stand your ground" laws. Black defendants who invoke this statute to justify their actions are actually acquitted almost eight percentage points more often than whites.

The *Tampa Bay Tribune* has put together very detailed data on "stand your ground" cases. Up through July 24th of this year from the beginning of 2006, the newspaper had collected 112 cases. The information that they had that often constitutes their "shocking" is that 72 percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white person; 80 percent of those who killed Hispanics were also not convicted.

What one needs to remember, however, in this is that the vast majority of these crimes are within race. So, for example, 90 percent of blacks who were killed in "stand your ground" cases—who invoked "stand your ground" were killed by other blacks. In the case of whites, it was 85 percent. In the case of Hispanics, it was 100 percent.

The basic point is that if you are going to concentrate on the fact that relatively few people who kill blacks are going to be convicted using "stand your ground" defenses, you have to realize that almost all those people who are not being convicted are blacks. Sixty-nine percent of blacks who raised the "stand your ground" defense were not convicted. That compares to a little bit less than 62 percent for whites. Eighty percent of Hispanics who raised the "stand your ground" defense are not convicted. If blacks are supposedly being discriminated against because their killers so often are not facing any penalty, wouldn't it also follow that blacks are being discriminated in favor of when blacks who claim self-defense under the "stand your ground" law are convicted at much lower rates than other racial groups?

The problem also is not all these cases are the same. Blacks killed in confrontations were 13 percentage points more likely to be armed than whites. By a 43- to 16-percent margin, blacks killed—again, killed by other blacks—were also more often in the process of committing another crime. They also were involved in cases where it was much more likely to have a witness present.

If you go and run regressions where you try to account for all the factors that are brought up in the *Tampa Bay Tribune* data set, what you find is that white defendants are more likely to be convicted than black defendants, and people invoking "stand your

ground” laws who kill blacks were also more likely to be convicted than those who killed whites.

What you find when you look at it—and fortunately this is the case—the people who initiated the confrontation were more like to be convicted. And when there were eyewitnesses, they were less likely to be convicted. Armed individuals and when more than one person was killed also were much more likely to result in convictions.

The Urban Institute report that was brought up earlier, I think, actually shows the opposite of what has been quoted here.

One of the important things just to mention: John Roman, who wrote this, noted, “Stand Your Ground laws appear to exacerbate”—well, he said they appear to exacerbate racial differences, but he acknowledges his data lacks details available in the *Tampa Bay Tribune* data: “The data here cannot completely address this problem because the setting of the incident cannot be observed.”

And if you go through his paper, what you find, he has no data, no information on whether an eyewitness saw the confrontation, no data on whether there was physical evidence. He has no evidence on a whole range of things in order to try to factor those into account.

The big thing, if you look at his study, the central finding is to look at Table 3, and what you find is that when blacks are under “stand your ground” laws, their situation in terms of conviction rates actually fall.

If you look at the Texas A&M study that was mentioned, they do not account for any other gun control laws. If you are going to look at “stand your ground” laws, whether you have right to carry, the number of people who have permits is going to be important. And when you account for those things, the results disappear.

If you are talking about Castle Doctrines, whether people are able to get quick access to guns is going to be important. And, again, nothing about gun law or State storage laws are accounted for in those studies, and when you do that, the results also disappear.

[The prepared statement of Mr. Lott follows:]

Chairman DURBIN. Thank you, Mr. Lott.

Our final witness is Lucia McBath. Ms. McBath is the mother of Jordan Russell Davis, who was shot and killed on November 23, 2012, at a gas station in Jacksonville, Florida. Ms. McBath and Jordan’s father, Ron, have become advocates for reducing gun violence. Ms. McBath is the national spokesperson for an organization known as “Moms Demand Action for Gun Sense in America.” She recently founded the Walk with Jordan Scholarship Foundation, providing assistance for graduating high school students. Ms. McBath is a graduate of Virginia State University, and before you say a word, I would like to thank all the members of the panel for their patience in the rescheduling of this hearing. We had a chance to meet when it was previously scheduled, and I am glad we did have those moments together.

So please proceed with your testimony.

**STATEMENT OF LUCIA HOLMAN MCBATH, ATLANTA, GEORGIA**

Ms. MCBATH. Thank you. Good morning, Chairman Durbin and honored Members of the Subcommittee. My name is Lucia Holman McBath, and I thank you for the opportunity to speak before this great institution today.

I was raised in a family steeped in justice and confident in the triumphant goodness of humanity. My mother was a registered nurse, and my father, who served in the U.S. Army Dental Corps, was also, for over 20 years, president of the NAACP for the State of Illinois. He worked actively with President Lyndon Baines Johnson in the signing of the Civil Rights Act of 1964. If he could see me here today, testifying in front of the U.S. Senate, he would be beaming with pride and amazed at how far his daughter had come—until he came to understand what brought me here.

I appear before you because my son Jordan was shot and killed last November while sitting in the back seat of a friend's car listening to loud music. The man who killed him opened fire on four unarmed teenagers even as they tried to move out of harm's way. That man was empowered by the "stand your ground" statute. I am here to tell you there was no ground to stand. There was no threat. No one was trying to invade his home, his vehicle, nor threatened him or his family. There was a vociferous argument about music, during which the accused, Michael Dunn, did not feel he was treated with respect. "You are not going to talk to me like that," he shouted as he sprayed the car that Jordan sat in with bullets, killing him instantly. When Jordan's friends tried to back the car away, Mr. Dunn aimed his handgun and fired off several more rounds; nine, total, pierced the car. There are any number of ways this interaction might have gone, but there was only one way it could have ended once a gun entered the equation.

In Florida, over one million people carry concealed weapons. Additionally, 10,000 to 15,000 more Floridians are approved to carry guns in public every month—faster than any State in the Nation. Nationally, Florida has some of the loosest permitting requirements. Automobile glove boxes are becoming modern day "gun boxes." In his glove box, Michael Dunn kept a 9mm semi-automatic gun along with two loaded magazines. Once he had unloaded his gun at my son and his teenaged friends, he immediately went back to his hotel, ordered a pizza, and slept. He left the scene and made no attempt to call police. He retreated, but only after he killed my son. The next morning, he was arrested two hours away. Those are hardly the actions and motives of someone who was quaking with fear.

Some will tell you that the argument was about music, but I believe that it was about the availability of guns and the eagerness to hate. People like Mr. Dunn feel empowered to use their gun instead of their voice to reason with others. Now I face the very real possibility that my son's killer will walk free, hiding behind a statute that lets people claim a threat where there was none. This law declares open season on anyone that we do not trust for reasons that we do not even have to understand. They do not even have to be true. In essence, it allows any armed citizens to "self-deputize" themselves and establish their own definition of law and order. It lets one and all define their own criteria for right and

wrong and how justice will be carried out. Even the Wild West had more stringent laws governing the taking of life than we have now. "Stand your ground" defies all reason. It goes against the sound system of justice established long ago on this very Hill.

My son was named for the Jordan River. In the Bible, that river symbolized the crossing to freedom. Its waters marked the final steps to liberation and offered up the holy stream that baptized Jesus. Its name seemed a fitting choice for a boy born at the end of the 20th century—a time when black people in this country had finally come into their own.

Jordan was named for a change in the tide, a decision to try harder and do better. He was my only child. He was raised with love and learning and a clear understanding of right and wrong. I have been without Jordan now since Thanksgiving weekend 2012, without him last Christmas and on his birthday in February. I never got to take his prom picture or see him graduate from high school. I can tell you all about him—about his easy smile, his first girlfriend, and his plans to join the Marines. I can tell you how he loved his dad's gumbo and how they both rooted for the New York Giants. But you can never really know my boy, because an angry man owned a gun, kept it close at hand, and chose to demonstrate unbridled hatred one balmy evening for reasons I will never understand. These laws empowered his prejudiced beliefs and subsequent rage over my son's own life, his liberty and pursuit of happiness. There will be no sense made of any of it unless I and the families of other victims speak out to assure that this kind of predatory violence ends.

It was 50 years ago that my father shook hands with Eleanor Roosevelt. She assured him of the validity of his struggle and the promise of better times. She, as he did, believed that this Nation was righteous to the core; that we as a country would never stop striving to do better; and that was what made us better. Honorable men and women of the Senate, you can prove them right today. With your help and willingness to bring our laws back toward the true tenets of justice, you can lift this Nation from its internal battle in which guns rule over right. You have the power to restore hope to a Nation crying out for justice, and I pray that you hear the will of the Lord.

Thank you.

[The prepared statement of Ms. McBath appears as a submission for the record.]

Chairman DURBIN. Thank you, Ms. McBath.

We will now turn to questions for the witnesses, and each Member of the Committee will have seven minutes. I will start.

Ms. Fulton and Ms. McBath, thank you for your courage in coming here today. I find it hard to understand those who defend "stand your ground" by arguing that African Americans should celebrate these laws. The notion that somehow this is to the benefit of African Americans or minorities in this country just defies the stories that we have been told by both of you. Innocent children—children—killed in the name of self-defense, when in neither instance was there evidence of aggressive or violent conduct by these victims, these young men who were shot down.

Professor Sullivan, you have heard these arguments made, two members of the panel and a Member here, about this notion that somehow African Americans should view this as a positive thing on “stand your ground.” What would you respond?

Mr. SULLIVAN. Well, I would agree with your statement, Senator Durbin. It is not a positive thing for anyone where citizens of the United States are running around shooting each other. Whether the perpetrator is African American, whether the victim is African American, it really does not matter. We do not live in the Wild, Wild West era any longer. Private law enforcement has a deleterious effect on our country, and we should leave it to trained police officials to engage in this sort of behavior.

Chairman DURBIN. Mr. LaBahn, your testimony—I read it over last night and again this morning—and I was particularly moved by one section of it that I would like to repeat. You stated: “By expanding the realm in which violent acts can be committed with the justification of self-defense, ‘stand your ground’ laws have negatively affected public health and undermined prosecutorial and law enforcement efforts to keep communities safe.”

You then go on and talk about a specific case in February 2008, which you mention in your testimony: “... a 29-year-old drug dealer named Tavarious China Smith killed two men in two separate incidents, the first drug-related, and the second over retaliation for the first. Though he was engaged in unlawful activity in both instances—selling drugs during the first shooting and using an illegal gun in the second—prosecutors had to conclude that both homicides were justified under the Florida’s “stand your ground” law. “Unfortunately,” you go on to say, “this example is not an anomaly. A recent study concluded that a majority of defendants shielded by ‘stand your ground’ laws had arrest records prior to the homicide at issue.”

Now, Mr. LaBahn, if we had called as a witness here a person representing the National Association of Criminal Defense Attorneys, maybe some people would have understood: “Oh, I can see where they are going.” But in your case, you represent the profession of those who prosecute criminals, and you are saying “stand your ground” laws are not working to the benefit and defense of America. Tell me why you come to that conclusion.

Mr. LABAHN. Well, Senator, I think you gave that example, and I can give the Committee additional examples and even more recent cases, but I will start right away with your question about the National Association of Criminal Defense Lawyers. On behalf of APA, we work closely with the defense bar, and this is one of the areas that the two of our groups, we diverge. Why? Because this is good for the defense.

When I testified down in Florida, there was a defense lawyer that was on the Scott Commission. He clearly said this is good for the defendants.

Chairman DURBIN. Excuse me. You are saying the criminal defense lawyers were arguing that “stand your ground” laws were good for criminal defendants.

Mr. LABAHN. Good for criminal defendants, that the role of the criminal defense attorney is to get their client off in the criminal action. However, the role of the prosecutor is to seek justice. So on

behalf of the criminal defendants and defense lawyers, this is a good law. Look at the ambiguities that are here. Look at the specific examples. You talked about—here is a drug dealer in an open-air drug market. Now, unfortunately, at the time of the killing he was not selling. If he had been selling drugs, then it would be an unlawful activity. But he was just in a legal place he had a right to be, and he was not selling at that moment; therefore, he had a right to defend himself.

The second piece, as I mentioned in my testimony, is a felon in possession. If someone is a convicted felon, they have no right to possess a firearm. Yet they can go ahead under “stand your ground” and use—especially by Florida decisions—use that firearm and be free and not be held accountable.

These stories are unbelievable. In January 2012, another Florida case, the victim was stealing—now, again, the victim of the shooting did something wrong, no question about that. But in this situation, someone sees their car being burglarized. They go ahead, they chase—they yell at him, “Get out of my car,” in this Florida situation chased him down and knifed him to death. Never reported, never called 911, never said anything about it, and then when confronted, said, “I was defending my property.”

The Texas example, November 2007: the Horn case that was broadly disseminated out to the country. A gentleman looks and sees his neighbor’s house being burglarized, calls 911 to report it. 911 urged them, you know, “Stay in your house. We will get him. We will take care of it.” No. Instead, he goes ahead and shoots both of those two dead—and I believe they were juveniles—and then goes ahead and exercises “stand your ground.” And that went in front of the Harris County grand jury. The Harris County grand jury found that to be “stand your ground.”

The movement here to create these presumptions and to give immunity—immunity—is crazy. That is not what it should be. It should be an affirmative defense, and that has caused these problems. So, yes, on behalf of prosecutors, these acts have done nothing but cause us difficulty.

Chairman DURBIN. It appears that this law is an invitation for confrontation, that historically—and I think Professor Sullivan raised this point—if you could safely retreat, that was your duty, except in your home. The Castle Doctrine, I believe, made a clear distinction when it came to your home in that circumstance. But the new laws, the “stand your ground” laws, are an invitation to confrontation and presumption of reasonableness and civil and criminal immunity.

Now I understand that the State of Florida is debating about changing these laws. Could either of you testify about how they would change their law and what they are raising as a reason for a change?

Mr. SULLIVAN. Well, I think they are raising as a reason for a change the fact that the law produces absurd results. One of the things that they are thinking about changing is clearly establishing this principle of first aggressor and whether first aggressors can avail themselves of the law.

Duty to retreat, if I can, Senator, is important because I have heard comments today that are plainly wrong with respect to what



historically duty to retreat meant. And you said it. It meant “safely retreat.” It did not mean stand there foolishly and be brutalized because of some law. If it is unsafe to retreat, nowhere in our history is an individual required to retreat; rather, only if it is safe to retreat. This is just a norm of good judgment, the exercise of good judgment, a norm that prevents the sort of vigilantism that we see in these many cases that were cited.

Finally, I think Florida, to answer your question, should tweak the immunity provision, because my point is that immunity, along with the change in presumption, conditions a certain response in people; that is, people who know this law behave in a way, a much more aggressive, frontiersman-like way, that they would not but for the broad, expansive protection of these laws, quite different from the historical self-defense laws and even quite different from the “stand your ground” iterations historically. 2005 marked an extreme difference in the way that these laws were written.

Chairman DURBIN. Thank you.

Mr. LaBahn.

Mr. LABAHN. Mr. Chair, thank you. Responding to your question about Florida, the other significant thing that Florida is doing and has passed out of their committee is the immunity provision. They are working on the—and it was the civil portion to say that if someone sprays and creates—kills a number of people in “stand your ground” that they should not be civilly immune, especially hitting an innocent bystander, because I think it is significant, and as I shared, I testified in front of that commission, and now they are stepping forward and changing what is a flawed law.

May I add one other comment, sir? William Meggs, who was unable—he is the second judicial circuit prosecutor out of Florida. He was unable to attend today, but he had been in the initial one. His closing comments, I think, are so very, very important, and that was this: “Shouldn’t we have a duty to act reasonably toward one another?” That was the law before “stand your ground” and which is why the law should return.

The bottom line is that this is an unnecessary law which makes it easier for the worst criminals to get away with some of our most heinous crimes. So, yes, that is why, on behalf of prosecutors, I stand here today.

Chairman DURBIN. Thank you.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

At the beginning, I would like to enter into the record a statement from the senior Senator from Texas, Senator Cornyn.

Chairman DURBIN. Without objection.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

Senator CRUZ. I would like to thank each of the members of the panel for being here, in particular Ms. Fulton and Ms. McBath. Thank you for being here. Thank you for sharing your stories. Every parent understands the mourning you are feeling, and it is always a tragedy when a child loses his life. And please know that we are all feeling your loss and express our very sincerest condolences.

Much of the discussion this afternoon has concerned the tragic circumstances of the Trayvon Martin case. And none of us in this hearing was there that night. None of us knows precisely what happened. We do know that there was a violent altercation between an Hispanic man and an African American teenager, and we know that at the end of that confrontation, the teenager was dead.

What exactly occurred that night no one in this room likely will know for sure. But we do know some things. We know that our system of justice has a process for ascertaining what happens when there is a violent confrontation, particularly one that leads to the loss of life, and that process is a jury trial. And a jury of Mr. Zimmerman's peers heard the evidence in that case. He was prosecuted in that case, and the jury rendered a conclusion. We do not know if the jury was right or wrong, but we do know that the jury system is the only system that our judicial system has for ascertaining what happened. Particularly when you have a one-on-one confrontation, it can be particularly difficult to determine what the facts are.

But we also know that the subject of this hearing, the "stand your ground" laws, was not a defense that Mr. Zimmerman raised. So this entire hearing—the topic of this hearing is not the issue on which that trial turned. And, sadly, we know that some in our political process have a desire to exploit that tragic, violent incident for agendas that have nothing to do with that young man who lost his life.

We have seen efforts to undermine the verdict of the jury and more broadly to inflame racial tensions that I think are sad and irresponsible. I recognize that for the family you are simply mourning the loss of your son, and I understand that. But there are other players who are seeking to do a great deal more based on what happened that Florida night.

I would note additionally that the Chairman of this Committee a moment ago made, I thought, a remarkable statement to the effect that no one could reasonably believe that "stand your ground" laws protect those in the African American communities who are victims of violent crime. I think that is a remarkable statement on many, many fronts, including the fact that a great many African Americans find themselves victims of violent crime and have asserted this defense to defend themselves, defend their families, defend their children.

But I also find it remarkable because the assertion that no one reasonably could suggest this benefited the African American community is drawn into remarkable relief when one keeps in mind that in 2004, a State Senator in Illinois by the name of Barack Obama cosponsored an expansion of Illinois' law providing civil immunity for those who use justifiable force to defend themselves. So the notion that "stand your ground" laws are some form of veiled racism may be a convenient political attack, but it is not borne out by the facts remotely.

I want to, second, note the issue of ALEC, an organization that exists to encourage common sense legislation in State legislatures. I would like to enter into the record multiple letters that have been submitted to me by organizations that are concerned about the targeting of ALEC in conjunction with this hearing.

Chairman DURBIN. Without objection.

[The letters appear as submissions for the record.]

Senator CRUZ. And I would note that it should always be a concern when you see the U.S. Senate targeting the exercise of free speech. This observation is not unique to me. Indeed, on August 8, 2013, the *Chicago Tribune* wrote an editorial that stated: “Free speech is not always free. It gets downright cumbersome” when Senators have you on their enemies lists. And it would be wrong for a U.S. Senator to use the power of his high federal office as a cudgel against his enemies, and I certainly hope that this Senate hearing does not become an avenue to suppress free speech.

A final point I would like to make: By its definition, the “stand your ground” law does not apply to aggressors. It explicitly excludes aggressors.

I would note, Ms. McBath, on the facts as you have described that evening your son lost his life, the defense would not apply, would not even arguably apply. It is a defense that only, only, only applies to those who are the victims or potential victims of other violent aggressors. Indeed, it is only triggered when there is “an imminent attack that could cause death or serious bodily injury.” So this is a doctrine that, by definition, does not apply to aggressors and only applies when death or serious bodily injury is at risk.

And so the question that all of us have to ask is: In a confrontation between a violent aggressor and a potential innocent victim, a potential innocent victim seeking to protect himself, herself, or her children, with whom do we stand? And I, for one, believe we should stand with the innocent against aggressors. That is why the right to self-defense has been so critical for time immemorial. And I hope that we will not see the constitutional rights of innocent citizens sacrificed because of political agendas of some.

Thank you.

Chairman DURBIN. I would ask patience of my colleague from Connecticut. Since the Senator from Texas has raised some personal issues, I am going to respond to them.

Let me be very specific when I say this. Do not take my word for it. Take the testimony of Hilary Shelton, director of the NAACP Washington Bureau, in which he states—and it is part of this record—“Few issues have caused as much angst and raised as many deeply held concerns among our members and the communities we serve as that of ‘stand your ground’ laws. These laws and their applications have sadly resulted in no less than the murder of people who were doing nothing more than walking down the street.”

Statement in the record by Hilary Shelton of the NAACP. This continued reference to “inflaming racial tensions,” my friends, we have heard this before over and over again. We have problems with the issues of race in America that we have to face squarely. And when people are being discriminated against, whoever, wherever in America, the Subcommittee on the Constitution, Civil Rights, and Human Rights is not going to back away.

The second point I would like to make is this: There are many victims when it comes to “stand your ground” laws. ALEC is not one of them. I will concede that I asked those who were publicly identified as supporters of this organization if they supported this

“stand your ground” law. Only one out of 140 that responded said they supported it. I am not going to enter the names of these organizations in the record for the very point that was made by the Senator from Texas. I do not want to establish any chilling effect on political participation. But I think it is reasonable to ask the members of an organization if they agree with that organization’s agenda, an agenda which Mr. Piscopo, who is now the chairman of ALEC, from the State of Connecticut, has said they no longer stand by.

So I am not going to enter any names into the record for that very reason, but isn’t it noteworthy that of 140 organizations contacted, only one said they supported ALEC’s agenda on “stand your ground” laws? That is a fact.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

You know, I want to thank the Chairman for having this hearing. It is not only a legitimate but a necessary hearing. It is profoundly important that we face these issues of human rights, which hopefully are also matters of constitutional rights. And I want to thank every one of the witnesses, all of you, for being here today, most especially Ms. Fulton, Ms. McBath, for your stories and your firsthand experience, which is so profoundly important, because we can have theoretical and rhetorical debates here, but what really matters is what happens to these doctrines of law in the streets, in the courtroom, when they are explained to juries. I say that as a prosecutor.

My fellow prosecutors would often say to me that the most difficult times for them in prosecuting a case was when the judge tried to explain the law to a jury. Right? How do you explain “stand your ground” in the complex, challenging, often emotionally charged time when a jury has to decide whether a person’s liberty should be taken away and sometimes even a person’s life as a result of the alleged commission of a serious crime?

And so I must say, Mr. LaBahn, your testimony has special meaning to me because the members of your associations are the ones who take cases, this myriad of facts, sometimes confusing and contradictory, and try to present them to a judge or a jury in a way that results in justice. And you used one word that I think is profoundly important: “ambiguity.” “Stand your ground” as opposed to self-defense, even as I sit here, I wrestle with what the distinctions are in real life and how they are explained to juries. And that is why I agree with Senator Durbin that the ambiguity of these doctrines can encourage violence and confrontation.

The apparent approval that it may give to people who feel that they have been insulted and maybe threatened, non-physically but verbally, seems to me can result in a hope of acquittal or non-conviction and thereby encourage violence.

So maybe you can speak to how in the courtroom this doctrine of “stand your ground” has a practical impact.

Mr. LABAHN. Thank you, Senator, and, you know, here I am in front of not one former Attorney General but actually two former Attorneys General, so I will have to be real good on my law, especially as you talk about the courtroom.

First of all, what this law does is place it as either it is murder or nothing. And you talked about the ambiguity. Someone chooses to take an action and chooses and intentionally kills another, and usually the role of prosecutors with homicide and that killing, is it a manslaughter, is it a murder? If it is a murder, is it a first or a second? Are there some special circumstances?

But when you put this, both the presumption and the immunity provisions in there, you create a situation where it is very difficult to determine, even at the filing stage, what kind of a crime it is. But especially particularly as it relates to Florida, you are put into that box. It is either murder or nothing.

Second, there has been some discussion here about the aggressor, and I would like the Committee to look at Chapter 776.041 of the Florida statute and why “stand your ground” did apply in the Trayvon Martin case and applied directly. It is because 776.041 says “use of force by aggressor.” And clearly within that statute, they allowed, and it is the person reasonably believes. So it was a subjective belief by Mr. Zimmerman that he was about—in imminent danger that therefore justified his use of that force, which goes directly to what one of the jurors said. And the jurors did—as you talked about the courtroom, the jurors followed the law. The law said you can use that reasonable force under the Florida “stand your ground” if you believe that you are reasonably in that imminent threat.

So, yes, it is incredibly difficult, and the ambiguity is never good. The other test that we use with ambiguity is how many appellate decisions come out of a particular statute. All of you know with State legislatures how many criminal statutes get passed, how much end up appealed and get reversed. And “stand your ground” is one of the most appealed, especially as it relates to the homicide cases. And that is why I say the ambiguity is incredibly apparent; just look at Nexus if you want to see all the different ways that this has been appealed.

Senator BLUMENTHAL. In your experience, Mr. LaBahn, do the members of your organization overwhelmingly share your view?

Mr. LABAHN. They do, and that is why I point to the statement of principles, also the difference between the legislative branch as well as the executive branch. My members are the executive branch. Once a legislature steps forward and passes a law, we must do everything we can to try to seek justice in those cases, just like what occurred in Florida. And even with that opposition, they are enforcing it.

Senator BLUMENTHAL. In your experience, do the overwhelming majority of police officers share this view?

Mr. LABAHN. Again, the officers that I am working at, the other national associations, yes, some very sincere. And that is why I talked about justified killing of an officer. I believe Indiana flips that around and basically encourages, as you talk about the public policy, to go ahead and take an officer’s life unless you, as the citizen, believe that that officer was following, in course and scope of employment. That to me, again, Senator, that is craziness.

Senator BLUMENTHAL. So police officers feel these laws may, in effect, represent a threat to them.

Mr. LABAHN. Back to ambiguity—both a threat to them, they might be serving a search warrant, going into a home, what if they are plainclothes, not in uniform, then absolutely. And I believe a Georgia case is directly on point with that one, that the requirement is that there be actual knowledge instead of an officer doing their job. That is a problem for police officers, and then officers do not know what to do when you have a statute that says you cannot arrest, you know, yet you are supposed to investigate. What does that mean?

Senator BLUMENTHAL. And I think you say it well in your testimony when you say, “Prosecutors”—and I am quoting: “Prosecutors, judges, police officers, and ordinary citizens have been left to guess what behavior is legal and what is criminal,” which I think hits the point about ambiguity.

Mr. LABAHN. And there should not be ambiguity in something like murder, Senator.

Senator BLUMENTHAL. Thank you.

Thank you, Mr. Chairman.

Chairman DURBIN. Mr. Shapiro, I know you have to leave to catch a train. You told us ahead of time. Thank you so much for your testimony and being here today.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

One of the observations about this whole debate is how diverse the States seem to be in terms of arriving at the same conclusion where you have Michigan, Nevada, New Hampshire, and Pennsylvania with “stand your ground” laws, and you have a lot of Southern States where—I guess the point I am trying to make, it seems to me that Democrats and Republicans, depending on what State you are from, seem to embrace these laws. Eight Democratic Governors have signed “stand your ground” laws, so I do not—I hope this does not turn into the Republicans are for it and the Democrats are against it. It seems to be a pretty diverse mix of views about whether or not this is good public policy.

Mr. Sullivan, from the federal point of view, there are remedies available to the Federal Government if there has been an injustice at the State level. Is that correct? Like in any case, the Trayvon Martin case, the case here in Illinois, the Justice Department could, if they chose, pursue federal action. Is that correct?

Mr. SULLIVAN. Absolutely.

Senator GRAHAM. Do you agree with Attorney General Holder’s decision not to pursue a federal civil rights case in the Trayvon Martin—

Mr. SULLIVAN. I do, based on the standard that needs to be satisfied in order to move forward with a case like that. The Federal Government would have to demonstrate that at the moment of the violent encounter, Mr. Zimmerman behaved as he did as a function of racial animus, and I am not sure that there is sufficient evidence there for the Federal Government to go forward. So I tend to agree with that case, with that decision on that basis, and also on a more prudential basis that the Federal Government should be cautious and exercise discretion in going in and upsetting a State verdict.

Senator GRAHAM. I think that is a very—I agree with you. I hope I am not hurting your reputation in the legal community, but—

Mr. SULLIVAN. You have enhanced my reputation, Senator.

Senator GRAHAM. Well, I am honored that you would say that, but I think that is a pretty reasoned view, because I know there was a lot of pressure being applied to the Attorney General and, quite frankly, the President, and, you know, we are talking about trying cases in political arenas, which is probably not a good idea. But having victims speak up, having mothers speak about losing their children, that is very appropriate, and I hope we will listen and learn where we can.

If you were defending a case like the Trayvon Martin case, would you have done similar things as the defense?

Mr. SULLIVAN. You will have to be a little more specific.

Senator GRAHAM. Was there anything wrong about the defense in that case, anything unethical?

Mr. SULLIVAN. I am not going to charge a fellow lawyer with unethical behavior without knowing more. I was deeply troubled by the caricature of Trayvon as the personification of a stereotype, Trayvon Martin as thug, Trayvon Martin as criminal. I was deeply troubled by that overlay over the criminal justice system. Whether that violated Florida's professional rules of conduct I do not know. I have not studied them with any detail in order to make that sort of claim. That I would not have done.

I will say that—

Senator GRAHAM. Have you ever defended a person accused of rape?

Mr. SULLIVAN. Personally?

Senator GRAHAM. Yes.

Mr. SULLIVAN. I have.

Senator GRAHAM. Have you ever questioned the victim?

Mr. SULLIVAN. I have.

Senator GRAHAM. And I guess the point from Ms. Martin's point of view, your son was a fine young man. I mean, I am trying to sit there and think as a parent, listening to all this in court, how I would feel. But I have been a defense lawyer, and, you know, the person expects you to vigorously defend the interest of the client, and that is why we have rape shield laws. We are trying to get that balance between how far can you go in attacking the victim to protect the rights of the accused. And in terms of the racial implications of that case, I think they are raw and are obvious. But, Mr. Lott, it seems to be from an objective point of view that "stand your ground" laws tend to apply—well, most violent crime is within the community itself. Is that correct?

Mr. LOTT. That is exactly right, and—

Senator GRAHAM. I am just trying to come to grips with the idea that somehow this law has a racial injustice about it, and I—I mean, do you think it does, Mr. Sullivan?

Mr. SULLIVAN. I think the way—the impact of the law has a disparate racial tilt, and that troubles me profoundly, that "stand your ground" was used in this particular case. If I can just amend what Senator Cruz said, it is not entirely correct to say that "stand your ground" was not part of this case. Mr. Zimmerman did not avail himself of the immunity portion of "stand your ground" law. However, the judge instructed, consistent with Florida law, which included an express statement of "stand your ground" law if you feel

that you were imminently in fear of death or reasonable bodily injury, then Mr. Zimmerman had a right to “stand his ground and use deadly force in response.”

I may have cited it in my written testimony. If I did not, I will provide it to the Chair, the specific jury instruction. So “stand your ground” was front and center in this case, just not the immunity portion of “stand your ground.”

Senator GRAHAM. Mr. Lott’s rendition of statistics were pretty compelling, and I do not claim to be an expert in this area. I guess from a politician’s point of view, when you have people like Governor Granholm and Joe Manchin, somebody I actually know, I do not believe in their mind at the time they signed these laws into law that they felt that that is what they were doing. Can you understand how somebody would come to a different conclusion?

Mr. SULLIVAN. Oh, of course, and I certainly do not mean to claim that the legislature sat down and said, well, let us see how we can prejudice minorities in writing these laws. But sometimes, because this is a human enterprise, juries are human beings, juries carry the baggage, unfortunately, this country has sometimes, but the laws express themselves in various sorts of ways.

Now, in terms of the statistics, I spent a lot of time—it probably bored your staff senseless—in terms of reading the statistical analysis there. You know, with all respect to my friend, you ask 10 economists a question, you get 11 different responses in terms of what the data means. There is a lot of noise, I will say. There is a lot of noise in the data. But when you do see examples like Jordan and Trayvon, my only point to this Committee and to the American public is that those are individuals. They are not data points. They are not statistics. They were living and breathing citizens whom we should care about. And to the degree that the law produces perverse results—and I submit to you that this result with Trayvon Martin was perverse. We do not know what is going to happen in the McBath case. But to the degree that is even a possibility, it is something that we should look at.

Senator GRAHAM. Well said. And I guess the point about trials, having been in court a few times, if you believe that Mr. Zimmerman was—that Mr. Martin was on top of Mr. Zimmerman inflicting punishment, that would be a different view. If you believe that he was just walking to get candy and a soda, which he obviously was, you wonder how can somebody be dead because of that. And this is so complicated. And the one thing I do not want us to do as politicians is to take away the ability of when it is your day in court, to avail yourself of a lawful defense that has been recognized. And the question for me is: Have we gone too far?

Mr. LABAHN. Senator, thank you for allowing me, because that was exactly what I was feeling and wanted to present. There has been a lot of discussion of Justice Harlan’s *Beard v. United States*, and that is clearly an objective standard. And if you look and you say, “in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury,” that is exactly the problem, and that is why there has been so much prosecutor opposition to this sort of direction. The Florida law—and we stand by the ver-



dict. As you said, many times there is the disappointment of what happens in court I have handled, and I have had “not guilty’s”; that occurs. But based upon the law as they drafted it, there it is a subjective belief, what did he believe at that time was occurring versus it being objective, as well as the immunity, and that is when you get trouble. And that is also—in 2007, when I was the director of the American Prosecutors Research Institute, we published a piece on the Castle Doctrine well in advance, and in that piece we were concerned about the racial implications because when you go to what that person believes and when you have such a heterogeneous population, you do not know what that person believes about another individual, especially by their skin, their age, whatever that might be. And because it is subjective, it allows them to go ahead and believe they are under danger and, hence, do the dramatic thing of taking a life.

Thank you for letting me——

Senator GRAHAM. Thank you.

Mr. LOTT. I would like to make a couple comments. One is, I mean, if you actually look at the data, look at the *Tampa Bay Tribune* data there, account for the different factors in the cases, you find that minorities, both blacks and Hispanics, are much more successful in raising “stand your ground” defenses than whites are.

There is another point that needs to be made, and that is, the ambiguity. One type of ambiguity has been discussed, but there is also the ambiguity that is having to face the person who is acting in self-defense. What is an appropriate amount for them to go and retreat when they are having to go and defend themselves? And the issue here might be who do we want to make, have to make—deal with that ambiguity? When somebody is facing very quick decisions that they have to make in terms of life and death, do we want to make them have to bear the burden to try to figure out at that time how far they are going to have to retreat, and then make them realize that they may be second-guessed. I have an appendix that shows a number of cases where they were second-guessed and cases where legislatures and others thought that the second-guessing was wrong there. They may make it so somebody who really needs to act in self-defense is stopped from doing so and thus endangering the safety of themselves or their family members that are there.

And then, finally, Mr. LaBahn, when he was talking about being able to go and have the “stand your ground” law apply, even though you may have been the initial aggressor there, he misses part of the law that he quoted, because it goes on to say you can use it, but then it puts very strict restrictions on how you can use it in that case. It says, “‘Stand your ground’ law is not available to a person who initially provokes the use of force against himself or herself unless, A, he or she exhausted every reasonable means to escape such danger other than the use of force, which is likely to cause death or great bodily harm to the assailant; or, B, in good faith the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force.”

The bottom line, I think, is pretty simple. Under “stand your ground,” if someone initially provokes somebody else, then they are required to retreat.

Chairman DURBIN. I want to thank this panel for the testimony and once again thank Ms. Fulton and Ms. McBath. Thank you for coming and reliving some very painful moments so that we can put this whole hearing into context. I thank all the witnesses for your testimony.

There has been a great deal of interest in today’s hearing. You can see from the attendance. A large number of individuals and organizations have submitted testimony for today’s hearing, including the NAACP, the Leadership Conference on Civil and Human Rights, the American Nurses Association, the Center for Media and Democracy, America’s Essential Hospitals, the Dream Defenders, the American Academy of Pediatrics, the Illinois Council Against Handgun Violence, the NAACP Legal Defense and Education Fund, the Newtown Action Alliance, Moms Demand Action, and many, many more. They will all be included in the record, without objection.

[The information referred to appears as a submission for the record.]

Chairman DURBIN. I would also like to say that when solicitation was sent out for those members, publicly listed members of ALEC to tell me their status or position on this, volunteering, if they wished, that information, some asked that their statements be made part of the record, and they will at their request. Those that did not make that request will not be included. Again, I do not want to create any chilling effect on participation in American politics. It is important that we preserve all of our constitutional rights to do so. But I thought it was appropriate to find out if the members of the organization stood by that policy position that was stated.

[The information referred to appears as a submission for the record.]

Chairman DURBIN. The hearing record is going to be open for one week to accept additional statements. Written questions for the witnesses must also be submitted by the close of business one week from today. We will ask witnesses to respond to those questions promptly to complete the record.

If there are no further comments from the panel or my colleagues, I thank the witnesses for attending and my colleagues for participating, and the hearing stands adjourned.

[Whereupon, at 11:57 a.m., the Subcommittee was adjourned.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

### UPDATED Witness List

Hearing before the  
Senate Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Human Rights

On

“‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use  
of Deadly Force”

Tuesday, October 29, 2013  
Dirksen Senate Office Building, Room 226  
10:00 a.m.

### Panel I

The Honorable Marcia L. Fudge  
United States Representative (D-OH-11)  
Washington, DC

The Honorable Luis V. Gutierrez  
United States Representative (D-IL-4)  
Washington, DC

The Honorable Louie Gohmert  
United States Representative (R-TX-1)  
Washington, DC

### Panel II

Sybrina Fulton  
Miami, FL

David LaBahn  
President and CEO  
Association of Prosecuting Attorneys  
Washington, DC

Lucia McBath  
Atlanta, GA

Ronald S. Sullivan, Jr.  
Clinical Professor of Law, Director of the Criminal Justice Institute  
Harvard Law School

Cambridge, MA

John R. Lott, Jr., Ph.D.  
President  
Crime Prevention Research Center  
Swarthmore, PA

Ilya Shapiro  
Senior Fellow in Constitutional Studies  
Cato Institute  
Washington, DC

## PREPARED STATEMENT OF HON. DICK DURBIN

Assistant Majority Leader Dick Durbin  
Chairman, Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on "Stand Your Ground Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force"

As Prepared for Delivery

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The debate over "stand your ground" laws raises fundamental questions about self-defense in America.

In recent years, we've seen a dramatic increase in laws expanding the situations in which a person can legally use deadly force in response to a perceived threat. Florida passed the first of this new wave of "stand your ground" laws in 2005.

Prior to 2005, Florida law held that a person outside his home could not use deadly force and then claim self-defense if the person could have safely avoided the confrontation. This "duty of safe retreat" sought to prevent public disputes from escalating into violence.

But the gun lobby pushed to change Florida's law so people could shoot someone who threatened them without trying first to avoid a confrontation.

Florida wasn't the first state to adopt this "stand your ground" principle, but Florida's 2005 law expanded the principle in dramatic new ways:

- The law grants criminal and civil immunity for uses of deadly force in "stand your ground" situations;
- It replaces a defendant's burden of proving reasonableness with a presumption of reasonableness when the defendant shoots anyone who intrudes upon his home, porch or vehicle;
- And it even allows the use of deadly force when a threat is not imminent.

The gun lobby wanted to spread Florida's law across the nation. So the National Rifle Association went to ALEC, the American Legislative Exchange Council, and asked them to promote it.

ALEC is an organization that brings corporate lobbyists and state legislators together for conferences where they draft model bills that they then work to get enacted.

In 2005, ALEC adopted model legislation that was nearly identical to Florida's law. They then began shopping it in statehouses. Within a year, 13 more states had passed similar laws. Today 25 states, not counting Florida, have passed a law based in whole or in part on the ALEC model.

ALEC called the enactment of these laws one of "ALEC's successes." CNN described ALEC as being "behind the spread of stand your ground laws" and the Wall Street Journal said ALEC was a "key advocate" for them.

Now that ALEC-style “stand your ground” laws are in effect for over half the country, we are seeing their national impact when it comes to public safety and civil rights. As we will hear from our witnesses today:

- The laws have led to increases in homicides and firearm injuries - including 600 additional homicides per year - with no deterrent effect on other crimes like robbery or assault. This point was made in several studies, including recent research from Texas A&M University.
- The laws have allowed shooters to walk free in shocking situations - shootouts between rival gangs, drug deals gone bad, and more. This point will be made by the testimony of David LaBahn, President and CEO of the Association of Prosecuting Attorneys.
- In some devastating cases, the laws have emboldened those who carry guns to initiate confrontations where they end up killing unarmed children. The testimonies of Sybrina Fulton and Lucy McBath about the devastating losses of their sons make that point more effectively than I ever could.
- And the laws increase racial disparities in the justice system. One study found that in “stand your ground” states nearly 17% of homicides involving white shooters and black victims were ruled justified, compared to only 1% of homicides with black shooters and white victims. Also, at my request, the Congressional Research Service analyzed FBI data on justifiable homicides before and after the 2005 wave of “stand your ground” laws and found that racial disparities clearly increased. I will put this CRS memo in the record.

It is time for “stand your ground” laws to be carefully reconsidered. Whatever the motivations were behind the passage of these laws, it is clear that these laws often go too far in encouraging confrontations to escalate into deadly violence. They are resulting in unnecessary tragedies, and they are diminishing accountability under the justice system.

I’m pleased that efforts to reconsider these laws are now underway. Earlier this month, one of the legislators who drafted Florida’s law joined with one of its chief opponents in a bipartisan effort to revise the law. Those revisions have now passed in a State Senate Committee.

Much more needs to be done. But we seem to be moving past the question of whether “stand your ground” laws should be fixed and are now looking at how best to fix them. I urge other states that have “stand your ground” laws to revisit them as well.

To the extent that “stand your ground” laws were passed based on the ALEC model, I would note that few who are connected with ALEC appear wedded to that model today.

In fact, I reached out to every company and organization that was publicly listed as a member or sponsor of ALEC since 2005 to ask if they supported ALEC’s model bill. I heard back from over 140 of them, and only one said yes, they did support it. Even ALEC issued a statement saying they no longer have a policy on “stand your ground.”

It is also important that Congress review “stand your ground” laws because of the way proposed federal legislation implicates those laws.

Just this past April, 57 Senators voted for a gun lobby amendment that would allow a person who receives a concealed carry permit in one state to carry his gun in every state – even if the person would be disqualified from getting a permit in other states because of misdemeanor convictions, inadequate training or other factors.

Congress should think carefully about how proposals like this would mix with “stand your ground” laws.

Today, we have before us a distinguished lineup of witnesses who will talk about the impact of “stand your ground” laws on public safety, civil rights, and American families, and the ways we can work to fix them. I look forward to their testimony.

## PREPARED STATEMENT OF HON. JOHN CORNYN

**Statement of Senator John Cornyn***“Stand Your Ground” Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force*

The Tenth Amendment to the United States Constitution ensures that each State has the sovereign right to pass laws to protect the safety and welfare of their citizens. In the words of James Madison in Federalist No. 45: “Those powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” So I am troubled that this Committee, a part of the federal government, is here investigating the choice of State governments to design constitutional, popular, and effective self-defense laws.

U.S. Representative Elijah Cummings, a Democrat from Maryland, recently said of any changes to “Stand Your Ground” laws: “I don’t think it can be done from here. . . It’s something that’s going to have to be done by the States.” I agree with Representative Cummings, and I believe that self-defense rights and policies are a decision reserved to the states and the people by our Constitution. And the States have spoken very clearly on this issue: they believe that their citizens should have the right to reasonably defend themselves from violent criminals. By my count, at least 40 states have adopted either a “Castle Doctrine” or “Stand Your Ground” law, allowing their citizens to better protect themselves from criminals. Support for these laws has been broad and bipartisan across state governments. In fact, as an Illinois state senator, President Obama not only supported, but cosponsored, an expansion of Illinois’ state “Stand Your Ground law.”

In 2007, my home State of Texas enacted a “Stand Your Ground” law, which says that a person is not a criminal if they reasonably use deadly force to defend themselves or their family from a violent attack. In other words, in Texas, a law-abiding citizen has no duty to retreat from a violent criminal who is attempting to kill them. This is a common-sense formulation of the fundamental right to self-defense protected by the Second Amendment. I will always support and stand up for the efforts of Texas to protect the Second Amendment.

Since Texas passed its “Stand Your Ground” law in 2007, the violent crime rate in our State has decreased by more than 20%, and the murder rate has decreased by more than 25%. We have seen similar drops in violent crime rates in other states following their passage of such laws. It is therefore no surprise that common-sense self-defense laws are so popular among the States—they protect Second Amendment rights and help reduce violent crime. And the American people agree. A recent Quinnipiac poll found that 53 percent of Americans support “Stand Your Ground” laws, with only 40% opposed. So the message is clear: the Second Amendment right to self-defense is popular,



and the American people do not want Washington, D.C. to infringe upon the rights of the States to protect their citizens.

I come from a State that has a proud history of standing its ground to protect the rights and safety of its people. During a 13-day siege in 1836, the defenders of the Alamo stood their ground and defended the citizens of Texas against an attempt to violate their rights and liberties. It is from this tradition that I request that this committee take no further action to investigate or restrict the right of the States to pass self-defense laws that are constitutional, popular, and effective.

Instead of spending our time on a wild-goose chase investigating laws that we have no power to change, we should be working together to reform our mental health and criminal justice systems to ensure that violent criminals and deranged madmen do not obtain weapons. However, given this administration's troubling record of interfering with legitimate state laws and failing to prosecute criminals who illegally obtain weapons, I am not confident. I look forward to hearing the testimony today, but hope that this Committee will think long and hard before attempting any action that would infringe upon the rights of the States and the American people to defend themselves and their families.

## PREPARED STATEMENT OF SYBRINA FULTON, MIAMI, FLORIDA

Sybrina Fulton –Testimony

Page 1 out of 5

29 October 2013

**STATEMENT OF SYBRINA FULTON  
to the COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON THE  
CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS,  
of the UNITED STATES SENATE**

**HEARING on “STAND YOUR GROUND’ LAWS: CIVIL RIGHTS AND  
PUBLIC SAFETY IMPLICATIONS OF THE EXPANDED USE OF DEADLY  
FORCE”  
29 October 2013**

**Short Biographical Note**

Sybrina Fulton and Tracy Martin are the parents of Trayvon Martin, a 17-year-old African-American high school student killed by George Zimmerman on February 26, 2012 in Sanford, Florida. At the time of the shooting, Zimmerman was a 28-year-old self-appointed neighborhood watch coordinator for the gated community where Martin was temporarily residing. Against the instructions of 911 operators, Zimmerman followed, pursued and confronted Trayvon Martin before fatally shooting him in the chest following an altercation. According to former Sanford Chief of Police Bill Lee, Zimmerman was taken into custody but released shortly afterwards on the basis that there was “no evidence” to refute Zimmerman's claim of having acted in self-defense, and that under Florida's “Stand Your Ground” law police were prohibited from making an arrest. On April 11, 2012, a special prosecutor appointed by Florida Governor Rick Scott charged Zimmerman with 2<sup>nd</sup> degree murder. He was subsequently acquitted of all charges on July 13, 2013.

**Introduction**

Thank you all for providing me the opportunity to speak to you today concerning the death of my 17 year old son, Trayvon Benjamin Martin. I know that you are burdened with difficult and important decisions every day and I thank you for your service. For a moment, I would like to ask that you try to step away from your roles as United States Senators and to simply think as human beings -- husbands and wives, and most importantly parents. Imagine how you would feel if you lost a child or a loved one to random violence and then watched their admitted killer evade justice. Words could never capture the feeling of devastation losing my son caused me, nor can they explain the betrayal I felt as I watched his killer go free.

The national and even international outrage over the acquittal of our son's killer has led to bipartisan calls for "Stand Your Ground" laws to be reviewed across the nation. The record is clear: these laws are open to abuse and they encourage violence. People now feel unsafe in public places. Tracy and I have started a petition calling for the amendment of "Stand Your Ground" laws. Our petition has already received more than 425,000 signatures. The law should be changed to include language that clarifies its original intent, as articulated by Florida's former Governor Jeb Bush, who signed "Stand Your Ground" into law. Regarding our son's killing, Governor Bush said "'Stand Your Ground' means stand your ground. It doesn't mean chase after somebody who's turned their back."

#### **Public Safety and 'Stand Your Ground' Laws**

Public safety should be a bipartisan issue. Gun control is an emotional issue on all sides, and understandably so. My father, who was a former police officer, always kept a firearm in our home and I grew up around guns. In that regard, I appreciate the feelings of those who choose to legally arm themselves so that they can protect themselves and their families. I do not want to see the responsible ownership or use of firearms restricted in any way. I only want to see the laws surrounding self-defense clarified, so that they are applied logically and, most importantly, consistently.

Sadly, other cases, such as the senseless killing of Jordan Davis, have shown that my son's death was not an isolated incident. Currently, poorly worded self-defense laws create an environment that encourages and enables violent, armed individuals to kill people, including children. Unfortunately, Trayvon and Jordan are not the only victims. The number of homicides ruled "justifiable" each year in Florida has nearly tripled since "Stand Your Ground" took effect.

Many people have mistakenly assumed that because my son's killer did not apply for "'Stand Your Ground' immunity during the trial, that this law was not a factor in his death. The truth is that the "Stand Your Ground" law in its entirety creates many opportunities for people to commit terrible acts of violence and evade justice. By being unclear in when and how it is applied, "Stand Your Ground" in its current form is far too open to abuse. Although we may never know for sure what was going through the head of our son's killer, we do know that our son's killer studied "Stand Your Ground"

closely. That knowledge may have emboldened him to stalk my son and use lethal force even in a situation where it seemed unnecessary and certainly avoidable.

#### **“Stand Your Ground” Laws and Law Enforcement**

In our son’s case, the prosecution’s case was severely undermined by the lack of an appropriate initial investigation by the Sanford Police Department. When our son’s killer initially claimed self-defense under Florida’s “Stand Your Ground” law, the State Attorney’s office and the Sanford Police Department failed to arrest George Zimmerman or to treat him as a person who had just committed a homicide. Instead investigators treated him like the blameless victim. Not only did the Sanford Police Department fail to test Zimmerman for drugs or alcohol on the night of the shooting, they also failed to thoroughly interrogate him concerning the details of the incident that led to the fatal shooting of my son. Instead of conducting a thorough and proper investigation to gather the intricate details and the truth surrounding my son’s death, the investigating officers offered psychological support to Zimmerman and sent him home after asking him a series of yes and no questions. They essentially spelled out what he needed to say to successfully claim self-defense.

How can we allow someone to escape liability for killing a total stranger he stalked, chased, and confronted, based solely on the killer’s word? This seems like a classic example of circular logic. It is not logical to allow a person to commit a homicide and then turn around and allow them to speak for the deceased party whom they just killed. “Stand Your Ground” thus rewards killers for silencing their victims and claiming the deceased party was the aggressor in the matter.

#### **“Stand Your Ground” Laws and Jury Instructions**

“Stand Your Ground” was also a factor in the way in which the jury in our son’s case applied the law. First, the language of the law is not clear. We don’t know for certain what happened during the jury deliberations, but we do know that the two jurors who have spoken publicly about the case both said that they were confused. In Trayvon’s case, Juror B37 specifically mentioned “Stand Your Ground” multiple times in explaining her decision to set Trayvon’s killer free. The laws relating to self-defense, which determine the guilt or innocence of killers, should be clear and easily understood by those tasked with applying them.

The instructions to the jury included all the protections provided by “Stand Your Ground” without mentioning the primary traditional limitation. For centuries, first aggressors have been denied the right to claim self-defense when they lose fights they start. Our attorneys have explained to me that the “first aggressor” doctrine is a part of the common law tradition predating America, but to me it is just common sense. Allowing my son’s killer to claim the protections of self-defense without constraining him with its accepted limitations violates Trayvon’s rights by providing him with an unequal level of protection under the law. Everyone should be able to feel safe walking in public without fear that someone might randomly stalk, confront and kill them and get away with it because they are not around to tell the court what happened. Knowing that someone targeted and killed a person who was not bothering them or anyone else should be evidence enough.

### **Conclusion**

When enacting legislation, it would be wise to follow the medical principle to “first do no harm”. If “Stand Your Ground” is causing more unnecessary deaths and enabling people to get away with murder, it should be fixed. The Bible says in Deuteronomy 30:19, “I have set before you life and death, blessings and curses. Now choose life, so that you and your children may live.” What choice are we making as a community and as a nation with these laws –life or death? The outpouring of support that my family has received in response to my son’s death leads me to believe that laws and practices that make it easier for one person to kill another with impunity betray the morality of the American people, Republican or Democrat, religious or secular, “black” or “white”. Sadly, Trayvon is one of many young people whose lives were taken by violence. It is my duty here to speak not just for Trayvon and our immediate family, but for all of these victims and all of our human family.

The “Stand Your Ground” law is important in the tone it sets and the message it sends. When an armed adult sees a minor in his neighborhood who he thinks does not belong, do we want the adult to follow him with a gun? When people can easily avoid a confrontation, do we want the law to empower them to go looking for one? Are we a nation that values the rights and lives of our children or not? Do we want laws that protect our children from gunmen, or do we want laws that protect gunmen from accountability?

I am a mother, not a lawyer or a legislator. I don't pretend to know all the details of the law, policy or politics surrounding "Stand Your Ground". What I do know, and what I am reminded of every day, is that my son was murdered. He was walking home with a snack and minding his own business when a stranger stalked him, chased him after he ran, confronted him and finally killed him. I believe in my heart that "Stand Your Ground" shares responsibility for what has happened to my family. "Stand Your Ground" may not have been in George Zimmerman's legal defense. But it was in his head from the law class he had taken, it was in the police chief's explanation for why they handled the case the way they did, and it was in the instructions given to the jury that acquitted him. Our family has dedicated our lives to changing "Stand Your Ground" laws in the hope that other families might be spared what we have gone through.

One of the jurors said, "George Zimmerman got away with murder." People should not be allowed to get away with murder. I find it sad that I even have to say that. How this can be legal is beyond my comprehension. What I do know is that "legal" does not always equal moral. Many terrible injustices were considered "legal" at one time or another, but then people saw the light and changed the law. In America in 2013 it is my belief that the people that you represent do not wish to see immorality justified with legality. To safeguard life and the liberties that we all appreciate so much, we must remain eternally vigilant against the great dangers of legalized injustice.

Thank you for your time.

Sybrina Fulton  
Mother of Trayvon Martin

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PREPARED STATEMENT OF RONALD S. SULLIVAN, JR., CLINICAL PROFESSOR OF LAW,  
DIRECTOR, CRIMINAL JUSTICE INSTITUTE, AND DIRECTOR, TRIAL ADVOCACY WORK-  
SHOP, HARVARD LAW SCHOOL, CAMBRIDGE, MASSACHUSETTS

TESTIMONY OF RONALD S. SULLIVAN JR.

PREPARED FOR THE

COMMITTEE OF THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,  
AND HUMAN RIGHTS

OF THE UNITED STATES SENATE

**HEARING:**

**“Stand Your Ground” Laws:**

**Civil Rights and Public Safety Implications of the  
Expanded Use of Deadly Force**

**October 29, 2013**

Prof. Ronald S. Sullivan Jr.  
Harvard Law School  
Director, Criminal Justice Institute  
Director, Trial Advocacy Workshop

## INTRODUCTION

Thank you Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights. My name is Ronald Sullivan and I am a Clinical Professor of Law at the Harvard Law School where I serve as faculty director of the Harvard Criminal Justice Institute and the Harvard Trial Advocacy Workshop. I teach and write in the areas of criminal law, criminal procedure, legal ethics, and race theory. Prior to my faculty appointments at the Harvard and Yale law schools, I served as Director of the Public Defender Service for the District of Columbia, where I represented hundreds of indigent clients in thousands of matters as a staff attorney, General Counsel, and, then, as Director.

I am here pursuant to this Subcommittee's request that I provide written and oral testimony regarding the impact of Stand Your Ground ("SYG") laws.<sup>1</sup>

Scholars often begin the introductory course in criminal law with a nineteenth century English case, called *Regina v. Dudley and Stephens*.<sup>2</sup> *Dudley and Stephens* tells the story of the crew of an English vessel caught in a terrible storm, and lost at sea, some 1000 miles away from land.<sup>3</sup> The crew's predicament was dire. They were virtually without sustenance for 20 days. During the first 12 days, the crew subsisted on two 1 lb. cans of turnips and a small turtle.<sup>4</sup> For the final eight days, they had no food whatsoever and only small amounts of rainwater they were able to catch in their hats.<sup>5</sup>

Realizing that their death was imminent, Dudley and Stephens decided that one of the crew had to be sacrificed in order to save the lives of the others. They reasoned that but for this drastic act, the entire crew would certainly perish.<sup>6</sup> As such, on the 20<sup>th</sup> day of being lost at sea, with "no sail in sight, or any reasonable prospect of relief,"<sup>7</sup> Dudley and Stephens decided to kill a boy, who was already significantly closer to death than anyone else.<sup>8</sup> As was a "custom of the sea" at that time, the crew sustained themselves by eating one of their fellows.<sup>9</sup>

Dudley and Stephens ultimately were rescued, nursed back to health, and then arrested and prosecuted for the homicide. They sought to be excused from criminal liability on the theory that their actions were motivated by necessity—that in order to save their own lives and the life of the other crew member, it was necessary that one life be sacrificed.<sup>10</sup>

It was not disputed that the crew was near death, and that the decedent probably would have died prior to the others.<sup>11</sup> It was further not disputed that the crew had no reasonable hope that they would be rescued.<sup>12</sup> Although the crew argued that the killing was justified as their only option, the court wisely disagreed.<sup>13</sup>

In reaching its decision, the court fully recognized that even though the crew was under great stress and legitimate fear of death, and that most would have felt impelled to behave as Dudley and Stephens did in the face of their own pending death, the law could not condone the taking of life.<sup>14</sup> Strikingly, the court reasoned that it "was often compelled to set up standards which we could not ourselves satisfy."<sup>15</sup> In so writing, the judges were



admitting that they, too, might have engaged in the same conduct as Dudley and Stephens when face-to-face with their own mortality, but the law sounds on an aspirational register. Often the law insists on our better angels.

One reason, therefore, that scholars teach *Dudley and Stephens* is to foreshadow a principle that sits at the heart of the Anglo-American juridical tradition. Human life is sacred<sup>16</sup> and the law will justify the taking of human life by civilians only in narrowly defined circumstances.<sup>17</sup>

### THE LAW OF SELF-DEFENSE

It is in this context that I discuss the law of self-defense, particularly as applied to the use of lethal force. Simply put, the law of self-defense holds that a person, who is not the aggressor, is justified in using deadly force against an adversary when he reasonably believes that he is in imminent danger of death or serious bodily injury.<sup>18</sup>

Here, I should bracket law enforcement officials for whom the rules differ. It is axiomatic that law enforcement is privileged to use force in a way different from average citizens.<sup>19</sup> In appropriate circumstances, law enforcement also is privileged to use deadly force.<sup>20</sup> Citizens, who are not law enforcement, by contrast, are not similarly privileged. Their ability to use deadly force in the face of an adversary's aggression is constrained by our self-defense law.

U.S. law has treated the privilege to use deadly force with circumspection. Inasmuch as the sanctity of human life sits as a central norm in our law, the law of self-defense imposes important limitations on its use. Five important concepts are necessary for a fulsome understanding of self-defense law: 1) proportionality, 2) temporality, 3) reasonability, 4) first-aggressor limitations, and 5) duty to retreat.

First, any use of force by a non-law enforcement officer requires that such force is proportional to the force employed by the aggressor.<sup>21</sup> For example, a light shove on the shoulder by an aggressor does not authorize the use of deadly force in response. Such force would be disproportionate to the initial aggression.

The second important concept in the law of self-defense is temporality. The individual seeking to insulate herself from criminal liability on a self-defense theory must reasonably believe that a threat is imminent.<sup>22</sup> This limitation is quite sensible. The threat has to be immediate. Any other rule would permit an individual to leave a dangerous situation, plan revenge, and engage in vigilante justice, all the while being protected by the law. For many self-evident reasons, this state of affairs is not desirable.

Third, an individual's fear must be reasonable.<sup>23</sup> That is to say, the law will not countenance every subjective fear of death or serious bodily injury. Rather, the law insists that the fear be objectively reasonable, the sort of fear that would be apprehended by a reasonable person.<sup>24</sup>

Importantly, and fourth, U.S. law normally makes the self-defense justification unavailable to the so-called first-aggressor. Put simply, one cannot start a fight, and then, when the victim retaliates, rely on a theory of self-defense to avoid criminal liability. The law only allows innocents or those with “clean hands” to be protected by the self-defense justification.<sup>25</sup>

Finally, and central to the national debate on Stand Your Ground laws, is the concept of duty to retreat. At common law, before using deadly force, the actor must retreat, if it was safe for her to do so. Without this limitation, our society could revert to a Wild West mentality where citizens take the law into their own hands.

### GENEALOGY OF STAND YOUR GROUND LAWS

The foregoing represents important limitations enshrined in the common law’s treatment of self-defense. The Stand Your Ground laws, by contrast, which are subject of today’s hearing, diverge from the requisites of common law in two important respects. The first is the duty to retreat. The second is the presumption of reasonable fear.

In order to understand the significance of this divergence, a brief history of how Stand Your Ground laws emerged is in order. Modern Stand Your Ground laws and our modern self-defense doctrine sprung from the same medieval English law root.<sup>26</sup> More specifically, English law and its early Anglo-American progeny held the duty to retreat to be a constitutive part of any justification to use lethal force.<sup>27</sup> That is, so long as one could safely retreat, he must do so prior to employing lethal force in response to an attack.<sup>28</sup> There was one exception to this principle at common law: a person had no duty to retreat in the home.<sup>29</sup> This exception to the general duty to retreat is commonly known as the “Castle Doctrine.”<sup>30</sup> It emerged from a strong seventeenth century norm which gave voice and vocabulary in the maxim that a “man’s home is his castle.”<sup>31</sup>

Early Anglo-American law existed in this form for much of the nineteenth and twentieth centuries.<sup>32</sup> The law of self-defense required an actor to safely retreat from threatening or dangerous situations, except when in the home. In this way, courts balanced the value of sanctity of human life and an individual’s right to protect self, family, and property.<sup>33</sup> During this period, several states remained faithful to this self-defense/Castle Doctrine model, including Alabama,<sup>34</sup> Delaware,<sup>35</sup> Florida,<sup>36</sup> Georgia,<sup>37</sup> Iowa,<sup>38</sup> New Jersey,<sup>39</sup> South Carolina,<sup>40</sup> and Vermont.<sup>41</sup>

Other states began to tweak the Castle Doctrine slightly by extending the non-retreat norm to spaces outside of the home.<sup>42</sup> Importantly, however, these states nonetheless expressly limited this expanded Castle Doctrine to instances where the actor reasonably believed the threat was “imminent.”<sup>43</sup> Where no reasonably imminent threat existed, the actor still had a duty to retreat. States that adopted this model include Arkansas,<sup>44</sup> Colorado,<sup>45</sup> the District of Columbia,<sup>46</sup> Kentucky,<sup>47</sup> Michigan,<sup>48</sup> Montana,<sup>49</sup> Nebraska,<sup>50</sup> Nevada,<sup>51</sup> New York,<sup>52</sup> North Carolina,<sup>53</sup> Ohio,<sup>54</sup> Oregon,<sup>55</sup> Rhode Island,<sup>56</sup> South Dakota,<sup>57</sup> Virginia,<sup>58</sup> West Virginia,<sup>59</sup> and Wisconsin.<sup>60</sup>

The conceptual space between self-defense laws in these two groups of states is not much. The former contains an absolute privilege of non-retreat in the home, while the latter extends that privilege to areas where one reasonably is in imminent fear of death or serious bodily injury. In fact, the latter formulation is not functionally different from traditional self-defense doctrine. It still limits the use of lethal force by insisting that an adversary's threat be "imminent" and the actor's fear be "reasonable."

This expansion of the Castle Doctrine in these states, therefore, is markedly different from the extant Stand Your Ground laws in Florida and other states for reasons I shall discuss in detail below. Suffice it to say, until 2005, variations notwithstanding, the law of self-defense and the Castle Doctrine remained fairly consistent.

Only nine states, by the early twentieth century, had completely abandoned the duty to retreat model: California,<sup>61</sup> Illinois,<sup>62</sup> Indiana,<sup>63</sup> Kansas,<sup>64</sup> Mississippi,<sup>65</sup> Missouri,<sup>66</sup> Oklahoma,<sup>67</sup> Texas,<sup>68</sup> and Washington.<sup>69</sup> But, even these states required an actor seeking the benefit of the self-defense justification to make a showing of "reasonableness."<sup>70</sup>

It is important here to note the values that motivated the expansion of the Castle Doctrine in the U.S. These changes grew out of decidedly twisted conceptions of "honor, chivalry, and the right to freedom from attack . . . entrenched in Southern society."<sup>71</sup> The formal law began to reflect then-existing societal norms sounding in "cultural acceptance of homicide as a method for resolving personal difficulties."<sup>72</sup> In other words, private law enforcement—bar fights and the like—was normative in dispute resolution.<sup>73</sup> Here, we see phrases like "true-man" and "stand your ground" creep into the self-defense doctrine.<sup>74</sup> But, even with this creep, and the abdication of the duty to retreat, a showing of reasonableness remained the burden of the one who sought the justification.

I raise these motivations to point out that private law enforcement is no longer and should no longer be a motivation to ease the restrictions on the legally authorized use of lethal force by private citizens. While the Clanton-McLaury gang might deem the Shootout at the O.K. Corral an appropriate mechanism to resolve disputes, the U.S. has matured considerably since the Old West. Presumably, no one wants to encourage a sea of bullets cascading through our City Centers. Yet, radical departures from the common law moorings of self-defense law ultimately and inescapably will lead to the very sort of pernicious private law enforcement that troubled so many Americans in the Trayvon Martin case.

This brings me to versions of Stand Your Ground laws that have recently populated so many states' statutory codes. Indeed, a seismic shift came in self-defense law when Florida promulgated its Stand Your Ground Law in 2005.<sup>75</sup> Florida's law, and states that follow its model, differ drastically from the common law in three important respects.

First, these instantiations of Stand Your Ground completely removed the duty to retreat from any space in which a person has a legal right to be.<sup>76</sup> This emboldens individuals to escalate confrontation, even deadly confrontation, whereas an alternative rule would decrease the likelihood of deadly exchanges. The Trayvon Martin matter is a case in

point. The very existence of this law emboldened Mr. Zimmerman to disregard the command of the 911 dispatcher and follow Trayvon Martin, arrogating law enforcement—what should be a public function—to himself. This private law enforcement attitude, made possible and emboldened by Florida's Stand Your Ground law, coupled with a permissive concealed carry law, was the "but for" cause of Trayvon Martin's death. But for the fact that Zimmerman exited his vehicle that evening, Trayvon Martin would be alive today.

Second, the law shifts the presumption regarding the reasonableness of one's fear of death or serious bodily injury.<sup>77</sup> This departure from the common law under Florida's regime carries a presumption that one who uses lethal force in her home or automobile is in reasonable fear. The actor, therefore, is presumed to be in reasonable fear of imminent death or grievous bodily injury. This presumption abrogates the need for someone who is responsible for a homicide to demonstrate the necessity for using lethal force. In so doing, the positive law insulates those already predisposed to forms of vigilante justice from having to affirmatively show the necessity of using lethal force and that the force was proportional to the imposed threat.

Third, the law provides for immunity from criminal arrest and civil liability. Such immunity has the invidious potential to encourage the very sort of vigilantism that ordinary law eschews. Indeed, it encourages a Wild West mentality that protects the "true man" who engages in battle. George Zimmerman's recent domestic dispute illustrates the impact the law has on behavior.

In September, Zimmerman's estranged wife, Shellie Zimmerman called 911 alleging that George Zimmerman was barricaded in her garage and threatening her and her father with a gun. The 911 exchange is telling, and I reproduce it, in pertinent part, below:

PD: 911 do you need police, fire or medical?

We do have units en route to you ma'am. Is he still there?

Shellie Zimmerman: Yes he is and he is trying to shut the garage door on me.

PD: Is he inside now?

SZ: No, he is in his car and he continually has his hand on his gun and he keeps saying step closer and he is just threatening all of us.

PD: Step closer and what?

SZ: And he is going to shoot us.

PD: OK.

These are the most ominous lines of the entire exchange. In real time,<sup>78</sup> Shellie Zimmerman is reporting that George Zimmerman “keeps saying step closer.” If this is true,<sup>79</sup> it demonstrates how knowledge of one’s rights in a Stand Your Ground jurisdiction animates aggressive forms of behavior. It is as if Mr. Zimmerman is goading Mrs. Zimmerman to enter a space in which Mr. Zimmerman could plausibly claim he had a right—a presumption, even—to “stand his ground.”

We are fortunate that no one was injured, or worse—killed, during this domestic altercation, but this provides a real life example of potential negative externalities that flow from Stand Your Ground laws—laws that encourage a daring, frontiersman mentality. There is a reason proponents and opponents, alike, refer to these laws as “shoot first.” The moniker does not derive from whole cloth.

Supporters of Stand Your Ground laws often cite crime reduction as a justification for the promulgation of such laws. I submit that the empirics do not bear this argument out, and I discuss the empirical evidence, in detail, below. Beyond the empirics, though, Stand Your Ground laws engender unintended consequences that sound in how people behave in Stand Your Ground states. Any law that invites these forms of private law enforcement carries with it the potential for misuse. Consider the following organizational justification for armed self-defense:

We exist “to protect the weak, the innocent, and the defenseless, from the indignities, wrongs and outrages of the lawless, the violent, and the brutal.”

This vocabulary is in form similar to the language deployed by supporters of Stand Your Ground laws. On its face, it reads as a noble calling, a calling for which reasonable citizens would be loath to object. The reader may be surprised, however, to learn that the above mission statement comes from the Ku Klux Klan’s founding documents.<sup>80</sup> This should serve as a cautionary example. Private law enforcement has the potential to breed forms of domestic terrorism. Citizens are neither trained nor prepared to engage in law enforcement functions, particularly in this increasingly heterogeneous polity.

Regrettably, the proliferation of Stand Your Ground laws, modeled after Florida’s statute, appears not to be the result of thoughtful legislative deliberation. Instead, interest groups and interested financial concerns were central to the passage of Florida’s law and the many that followed.

The National Rifle Association (“NRA”) played a significant role in developing Florida’s statute. Florida had long been a fertile state for new NRA-backed laws, beginning with the 1987 passage of Florida’s expansive “shall issue” concealed carry law.<sup>81</sup> Florida’s Stand Your Ground legislation was championed by former NRA president Marion Hammer, a prominent advocate in the Florida statehouse, and was passed quickly into

law in April 2005.<sup>82</sup> The bill's sponsor claimed the bill was inspired by a post-hurricane incident when an elderly man shot an intruder in his trailer and had to wait several months before prosecutors decided his shots were justified.<sup>83</sup> But the NRA's real agenda in Florida had been to promote an environment where expansive concealed carry laws were paired with expanded permission to use deadly force. NRA lobbyist Chris Cox articulated this vision in 2011, stating that "Florida, which can fairly be said to have launched the modern reform of state self-defense laws by adopting its Right-to-Carry law in 1987, continued in its trendsetting role in 2005 by adopting a comprehensive Castle Doctrine law. . . . Just as we work toward the day when all states allow all good citizens of age to carry firearms for protection, we will work until all states fully protect the right of law-abiding people to use force in defense of themselves and one another, without fear of prison or bankruptcy."<sup>84</sup> Scholars have speculated that the NRA's push for these laws was motivated at least in part by the decline in gun ownership in America, pointing out that as fewer Americans engaged in hunting and sport shooting the NRA has sought to liberalize concealed carrying and provide more legal cover for those who use guns in populated areas.<sup>85</sup>

In August 2005, Marion Hammer proposed model legislation that was nearly identical to Florida's law to the Criminal Justice Task Force of the American Legislative Exchange Council ("ALEC").<sup>86</sup> ALEC is an ideologically conservative organization that brings hundreds of corporate representatives and thousands of state legislators together at conferences where they jointly draft model legislation that they then work to pass in state legislatures.<sup>87</sup> According to an NRA bulletin, Hammer's presentation was "well-received" and her Florida-style legislation was adopted as ALEC model legislation titled the "Castle Doctrine Act."<sup>88</sup> From there, the model legislation spread quickly to statehouses across the country, with thirteen other states enacting bills in 2006 that incorporated provisions from the model.<sup>89</sup> The rapid spread of Stand Your Ground was a reflection of ALEC's customary effectiveness in advancing its model legislation in state legislatures; ALEC has claimed that lawmakers "typically introduced more than 1,000 bills based on model legislation each year and passed about 17 percent of them."<sup>90</sup>

Since 2005, over half the states have now passed laws based in whole or in part on Florida's law and ALEC's model legislation.<sup>91</sup> After Trayvon Martin's death in 2012, ALEC was criticized for its role in spreading Stand Your Ground and issued a statement claiming that its model law "is designed to protect people who defend themselves from imminent death and great bodily harm. It does not allow you to pursue another person. It does not allow you to seek confrontation. It does not allow you to attack someone who does not pose an imminent threat."<sup>92</sup> This claim did not reflect the reality of the model law's provisions, nor did it prevent a number of ALEC's corporate members from cutting ties with the organization.<sup>93</sup> ALEC subsequently announced in April 2012 that it would disband its task force that created the model Stand Your Ground law.<sup>94</sup> However, state legislators continue to introduce bills based on ALEC's model, with one watchdog organization identifying ten such bills introduced so far this year, two of which became law.<sup>95</sup>

**Dates When States Adopted Stand Your Ground Laws—post 2005<sup>96</sup>**

2005	Florida
2006	Alabama (part 1), Alaska (part 1), Arizona (part 1), Georgia, Idaho,* Indiana (part 1), Kansas, Kentucky, Louisiana, Michigan, Mississippi, Oklahoma, South Carolina, South Dakota
2007	Missouri, North Dakota, Tennessee, Texas
2008	Ohio, West Virginia, Wyoming
2009	Montana
2010	Arizona (expansion)
2011	Arizona (expansion), New Hampshire, Nevada, North Carolina, Pennsylvania, Wisconsin
2012	Indiana (expansion)
2013	Alabama (expansion), Alaska (expansion)

\* Idaho only passed civil immunity in 2006.

**STAND YOUR GROUND: PUBLIC SAFETY & CIVIL RIGHTS**

Proponents of Stand Your Ground laws often point to public safety and a reduction of crime as evidence of the efficacy of these laws. The empirical data appears to contradict these assertions. In fact, two studies find that homicide rates have increased—not decreased—in Stand Your Ground states as compared to states that have not changed their Stand Your Ground laws. In a recent Texas A&M empirical study, Mark Hoekstra and Cheng Cheng set out compelling evidence<sup>97</sup> indicating that “the laws do not deter burglary, robbery, or aggravated assault.”<sup>98</sup> In contrast, they lead to a statistically significant 8 percent net increase in the number of reported murders and non-negligent manslaughters.”<sup>99</sup> Hoekstra and Cheng go on to conclude, “[T]here is considerable evidence that these laws have generated an increase in homicides—more killings that would not otherwise have occurred absent the change in law.”<sup>100</sup>

Similarly, in a study conducted by the National Bureau of Economic Research, Chandler B. McClellan and Erdal Tekin question the claim that enactment of Stand Your Ground laws increase the “cost of violence”<sup>101</sup> and lower crime rates overall.<sup>102</sup> McClellan and Tekin, using compiled monthly data from the CDC,<sup>103</sup> suggest that both gun deaths and homicides have increased since the enactment of Stand Your Ground laws<sup>104</sup> and “rather than increase the costs of violence [to a would be attacker], SYG laws decrease them by expanding the range of legal defenses available to an attacker.”<sup>105</sup> In other words, the authors argue that Stand Your Ground laws benefit criminal elements, rather than deter them.

Other studies do not make quite as strong a claim, but they refute any suggestion that Stand Your Ground laws correlate with crime reduction. Prof. Robert Spitzer, for example, undertook a comprehensive analysis of empirical studies, and reached a set of conclusions that should give legislators pause.<sup>106</sup> First, Prof. Spitzer concluded that there is no evidence that Stand Your Ground laws reduce or suppress crime.<sup>107</sup> He writes:

None of these studies closes the book on the consequences of stand your ground laws, but they all point to the same conclusions. First, there was and is no identifiable benefit to be had by their enactment or the gun carrying that has typically accompanied it. There is no evidence that they reduce or suppress crime, or generate any societal benefit, beyond perhaps a feeling among gun carriers that they are acting justly or beneficially when potential self-defense situations arise.<sup>108</sup>

To be fair, these and like studies have limitations owing to the particular tools they employ. Causal claims, therefore, become difficult to prove.<sup>109</sup> This brings me to some promising research done by Anton Strezhnev. He has cross-researched to see whether these findings hold when using a different approach to causal inference.<sup>110</sup> Strezhnev writes,

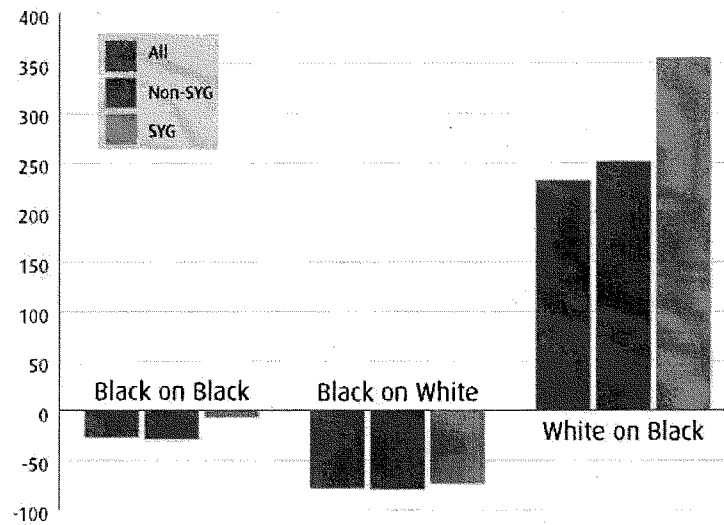
Florida's Stand Your Ground law did not have a deterrence effect on homicide, and may in fact have increased the state's murder rate.<sup>111</sup> This and other evidence strongly suggests that state governments should rethink their approach to self-defense laws. While politically appealing from a "tough on crime" perspective, Stand Your Ground laws likely do much more harm than good.<sup>112</sup>

In sum, while the empirical data may not be sufficiently robust to responsibly make a causal claim in either direction, the weight of the research appears to point in one direction. Stand Your Ground laws have little, if any, impact on homicide reduction. And, the promulgation of these laws appears to correlate with an increase in certain types of violent crime.<sup>113</sup> This data, or the absence of data that show Stand Your Ground laws as having the desired effect of crime reduction, should give legislatures pause, particularly given the very many negative externalities associated with these laws.

Finally, the Senate should pay particular attention to the proliferation of Stand Your Ground laws as they impact the civil rights of citizens of color. It is beyond dispute that Blacks and other racial and ethnic minorities are disproportionately, negatively impacted by our criminal justice system.<sup>114</sup> We know that rates of conviction in the criminal justice system correlate with the race of the victim.<sup>115</sup> Defendants of all races are more likely to be convicted if the victim is white.<sup>116</sup> This disparity is even more pronounced when comparing dispositions in Stand Your Ground states versus non-Stand Your Ground states. In non-Stand Your Ground states, for example, Whites are 250 percent more likely to prevail on a theory of justified homicide of a black person as compared to a white victim. By contrast, in Stand Your Ground states Whites are 354 percent more likely to prevail when the victim is black.<sup>117</sup> A recent Urban Institute study found that in cases comparable to Trayvon's—where a younger black man is killed by an unfamiliar older white man with a handgun—"the rate of justifiable homicide[] is almost six times higher."<sup>118</sup> Ultimately, this study found that "Stand Your Ground laws appear to exacerbate those [racial] differences, as cases overall are significantly more likely to be justified in SYG states than in non-SYG states."<sup>119</sup>



Below is a graphic representation of this disparity generated by Frontline.<sup>120</sup>



The figures represent the percentage likelihood that killings will be found justifiable, compared to white-on-white killings

### CONCLUSION: TRAYVON & TREY

I shall close, if I may, by making the following observations about the Trayvon Martin case. This case best illustrates why these Stand Your Ground laws are so destructive to our cities and states. I am honored to share the dais with Sybrina Fulton, Trayvon Martin's mother. And, I extend my heartfelt sympathies for your tragic loss.

Many have argued that the jury in the Trayvon Martin case did exactly what they were instructed to do. They held Florida to its burden of proving the case beyond a reasonable doubt by applying Florida law to the facts presented at trial. But, even for those who contend that the verdict was correct in that it was consistent with Florida law, the result nonetheless seems to have offended the moral sensibilities of many Americans. Why? Quite simply, the incontrovertible fact is that an armed adult followed and killed an unarmed and innocent black child.

Zimmerman's acquittal was made possible because Florida's Stand Your Ground and concealed weapons laws conspired to set the perfect background conditions for an acquittal.

Earlier I mentioned that most jurisdictions deny the protection of the self-defense justification to the first-aggressor. In the Trayvon Martin case, the jury clearly found that Zimmerman was not the first-aggressor in a strict legal sense. That is, at the point in time when Zimmerman fired the fatal shot, the jury presumably decided that Mr. Zimmerman was the victim. And, the verdict indicates that the state did not present sufficient proof that Zimmerman engaged in any conduct that would constitute provocation under Florida law.

Notwithstanding the requisites of first-aggressor status under Florida's positive law, it is equally clear that Zimmerman was the first-aggressor in a moral sense. He was an armed adult who pursued a defenseless child against the command of the police dispatcher.<sup>121</sup> I also strongly suspect that Zimmerman followed Trayvon Martin because he could not apprehend any lawful reason for a young black male to be walking through his Florida middle-class neighborhood. To Zimmerman, Martin's blackness served as a crude proxy for criminality. This is racial profiling in its purest and ugliest form. And, this ugly form of racial profiling led to the untimely and tragic death of an unarmed American child.

In sum, Florida's Stand Your Ground and concealed carry laws permitted Zimmerman to carry a loaded firearm, disregard the clear directive of the 911 dispatcher, pursue Trayvon Martin, and then stand his ground when Martin presumably and reasonably sought to defend himself against a threat.

The most unfortunate outcome of this shameful episode in our juridical history is the two-fold message it sends. First, it tells Floridians that they can incorrectly profile young black children, kill them, and be protected by a legal justification if ever tried for the resulting death.

But, second, this decision sends an even more troubling message to young black children who happen to walk down public streets of Florida. They might reasonably infer that if accosted by a threatening adult stranger, who is not law-enforcement, the child should use all reasonable force—including deadly force—to protect himself. What is the alternative: The innocent child dies and the offending adult is exonerated?

This unfortunate lesson instructs children of color in any Stand Your Ground state, not just Florida. I consider myself fortunate to live in a jurisdiction where the Stand Your Ground laws have not been voted into law. Indeed, I have an African-American son who is just shy of his thirteenth birthday and whose name, ironically, is "Trey." What advice would I give him if we lived in a Stand Your Ground state? In light of verdicts like the Zimmerman exoneration, and the data I cite above that correlates so strongly with race, I regret that the only responsible advice would be the following: if you feel threatened by a stranger, use all reasonable force, up to and including deadly force, to protect yourself. Or, as both proponents and opponents of Stand Your Ground laws contend, "shoot first" and ask questions later.<sup>122</sup>

To be sure, this is not a world that I want my son to grow up in. I would rather not counsel him in using lethal force when being profiled by vigilantes. That said, however, I

would rather my Trey be alive and able to argue that he “stood his ground” than dead and portrayed by lawyers and media alike as the personification of a stereotypical black male criminal.

This is not a desirable America for anyone. But, these laws might well inspire a rabid vigilantism, and corresponding responses, in the body politic. Rather than making us safer as Stand Your Ground proponents contend, we could degenerate into a Wild West atmosphere where none of us are safe.

Thank you for providing me the opportunity and space to share my thoughts with you. I urge this Subcommittee and the full Senate to take the lead in helping America think through the consequences of Stand Your Ground laws. It is imperative, in my view, that our elected officials help to create a country where citizens are not shooting and killing each other. I respectfully suggest that we permit police officials to police, and citizens go about the business of building peaceful communities.

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<sup>1</sup> I am deeply grateful for the expert research assistance provided by Dehlia Umunna, Teliza Ain Adams, Asmara Carbado, Ashley Lewis, and Kyle Wirshba. Any errors, of course, are mine alone.

<sup>2</sup> *Regina v. Dudley & Stephens*, [1884] 14 Q.B.D. 273 (Lord Coleridge C.J.) (Eng.).

<sup>3</sup> *Id.* at 273–74.

<sup>4</sup> *Id.* at 274.

<sup>5</sup> *Id.* at 273–74.

<sup>6</sup> *Id.* at 278 (“Homicide is excusable through unavoidable necessity and upon the great universal principle of self-preservation, which prompts every man to save his own life in preference to that of another, where one of them must inevitably perish.”); see *United States v. Holmes*, 26 F. Cas. 360 (E.D. Pa. 1842) (No. 15,383).

<sup>7</sup> *Id.* at 275.

<sup>8</sup> *Id.* at 274.

<sup>9</sup> NEIL HANSON, *THE CUSTOM OF THE SEA*, 123, 172 (John Wiley & Sons, Inc., 2000) (1999).

<sup>10</sup> *Dudley & Stephens*, 14 Q.B.D. at 287; see *Holmes*, 26 F. Cas. at 360, 367 (finding before the protection of the law of necessity can be invoked, a case of necessity must exist, the slayer must be faultless, he must owe no duty to the victim).

<sup>11</sup> *Dudley & Stephens*, 14 Q.B.D. at 274. The defendants contended that the boy’s death was imminent due to his diminished state.

<sup>12</sup> *Id.* at 279, 287 (“[I]t appears sufficiently that the prisoners were subject to terrible temptation, to sufferings which might break down the bodily power of the strongest man, and try the conscience of the best.”).

<sup>13</sup> *Id.* at 273, 279, 282–83, 285–86.

<sup>14</sup> See *id.* at 279, 285 (“The American case . . . in which it was decided, correctly indeed, that sailors had no right to throw passengers overboard to save themselves, but . . . the proper mode of determining who was to be sacrificed was to vote upon the subject by ballot, can hardly . . . be an authority satisfactory to a court in this country.”).

<sup>15</sup> *Id.* at 288 (“It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy.”)

<sup>16</sup> See *Furman v. Georgia*, 408 U.S. 238, 286 (1972) (Brennan, J., concurring) (“In a society that so strongly affirms the sanctity of life, not surprisingly the common view is that death is the ultimate sanction.”).

- <sup>17</sup> See Norman L. Cantor & George C. Thomas, III, *Legal Bounds of Physician Conduct Hastening Death*, 48 BUFF. L. REV. 83, 154–55 (2000) (“Government reinforces the sanctity of human life principle by banning all killings, including self-killings, except in extremely limited circumstances.”).
- <sup>18</sup> MODEL PENAL CODE § 3.04 (2012).
- <sup>19</sup> *Graham v. Davis*, 880 F.2d 1414 (D.C. Cir. 1989).
- <sup>20</sup> *Tennessee v. Garner*, 471 U.S. 1, 4 (1985) (noting that deadly force can be used when it is “necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others”).
- <sup>21</sup> See *United States v. Black*, 692 F.2d 314, 318 (4th Cir. 1982).
- <sup>22</sup> See *United States v. Holt*, 79 F.3d 14, 16 (4th Cir. 1996) (rejecting defendant’s argument for self-defense for failure to demonstrate imminent threat of death or bodily injury).
- <sup>23</sup> *United States v. Daija*, 529 F. Supp. 2d 465 (S.D.N.Y. 2008).
- <sup>24</sup> There are exceptions to this rule. Consider, for example, battered women syndrome. *Paine v. Massie*, 339 F.3d 1194, 1199 (10th Cir. 2003) (“Several of the psychological symptoms that develop in one suffering from the syndrome are particularly relevant to the standard of *reasonableness* in self-defense.”) (internal quotation marks omitted).
- <sup>25</sup> One can only use force that is necessary to escape one’s attacker. *United States v. Peterson*, 483 F.2d 1222, 1230, (D.C. Cir. 1973). Thus, in the event that victim uses excessive force on the first aggressor, the victim will assume the role of aggressor and the first aggressor will assume the role of victim.
- <sup>26</sup> L.W.B., Annotation, *Homicide: Duty to Retreat When Not on One’s Own Premises*, 18 A.L.R. 1279 (1922).
- <sup>27</sup> RICHARD MAXWELL BROWN, NO DUTY TO RETREAT: VIOLENCE AND VALUES IN AMERICAN HISTORY AND SOCIETY 4 (1991); Joseph H. Beale, Jr., *Retreat from a Murderous Assault*, 16 HARV. L. REV. 567, 567 (1903).
- <sup>28</sup> Darrell A.H. Miller, *Guns As Smut: Defending the Home-Bound Second Amendment*, 109 COLUM. L. REV. 1278, 1342 (2009) (“[V]iolent self-defense could be justified if the victim of such violence made every effort to avoid the confrontation.”).
- <sup>29</sup> *Id.* at 1341 (citing MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN 486 (Thomas Dogherty ed., London, E. Rider 1800) (1678)); Christine Catalfamo, *Stand Your Ground: Florida’s Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J.L. & PUB. POL’Y 504, 505 (2007) (citing Joseph H. Beale, Jr., *Retreat from a Murderous Assault*, 16 HARV. L. REV. 567 (1903)).
- <sup>30</sup> Miller, *supra* note 28, at 1341.
- <sup>31</sup> Catalfamo, *supra* note 29, at 506.
- <sup>32</sup> L.W.B., Annotation, *Homicide: Duty to Retreat When Not on One’s Own Premises*, 18 A.L.R. 1279 (1922).
- <sup>33</sup> Elizabeth B. Megale, *Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to “Get Away with Murder”*, 34 AM. J. TRIAL ADVOC. 105, 111–34 (2010).
- <sup>34</sup> *Morton v. Bradley*, 30 Ala. 683 (1857).
- <sup>35</sup> *State v. Talley*, 33 A. 181 (Del. O. & T. 1886).
- <sup>36</sup> *Danford v. State*, 43 So. 593 (1907).
- <sup>37</sup> See *Heard v. State*, 70 Ga. 597 (1883).
- <sup>38</sup> *State v. Thompson*, 9 Iowa 188 (1859).
- <sup>39</sup> *State v. Wells*, 1 N.J.L. 424 (1790).
- <sup>40</sup> *State v. McIntosh*, 18 S.E. 1033 (1894), *overruled by State v. Belcher*, 685 S.E.2d 802 (2009).
- <sup>41</sup> *State v. Roberts*, 21 A. 424 (1891).
- <sup>42</sup> L.W.B., Annotation, *Homicide: Duty to Retreat When not on One’s Own Premises*, 18 A.L.R. 1279 (1922).
- <sup>43</sup> *Id.*
- <sup>44</sup> *McPherson v. State*, 29 Ark. 225 (1874).
- <sup>45</sup> *Enyart v. People*, 180 P. 722 (Colo. 1919).
- <sup>46</sup> *Marshall v. United States*, 45 App. D.C. 375 (1916).
- <sup>47</sup> *Holloway v. Commonwealth*, 74 Ky. 344 (1875).

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- <sup>48</sup> Pond v. People, 8 Mich. 150 (1860).  
<sup>49</sup> State v. Rolla, 55 P. 523 (Mont. 1898).  
<sup>50</sup> See Willis v. State, 61 N.W. 254 (1894).  
<sup>51</sup> State v. Kennedy, 7 Nev. 374 (1872).  
<sup>52</sup> Shorter v. People, 2 N.Y. 193 (1849).  
<sup>53</sup> State v. Mazon, 90 N.C. 676 (1884).  
<sup>54</sup> Erwin v. State, 29 Ohio St. 186 (1876).  
<sup>55</sup> State v. Gibson, 73 P. 333 (Or. 1903).  
<sup>56</sup> See State v. Sherman, 18 A. 1040 (1889).  
<sup>57</sup> State v. Jaukkuri, 168 N.W. 1047 (1918).  
<sup>58</sup> See McCoy v. Commonwealth, 99 S.E. 644 (1919).  
<sup>59</sup> State v. Clark, 41 S.E. 204 (1902).  
<sup>60</sup> Miller v. State, 119 N.W. 850 (1909).  
<sup>61</sup> People v. Gonzales, 12 P. 783 (Cal. 1887).  
<sup>62</sup> Hammond v. People, 64 N.E. 980 (1902).  
<sup>63</sup> Runyan v. State, 57 Ind. 80 (1877).  
<sup>64</sup> State v. Reed, 37 P. 174 (1894).  
<sup>65</sup> Long v. State, 52 Miss. 23 (1876).  
<sup>66</sup> State v. Hudspeth, 51 S.W. 483 (1899).  
<sup>67</sup> Kirk v. Territory, 60 P. 797 (Okla. 1900).  
<sup>68</sup> W. v. State, 2 Tex. App. 460 (1877).  
<sup>69</sup> State v. Carter, 45 P. 745 (Wash. 1896).  
<sup>70</sup> L.W.B., Annotation, *Homicide: Duty to Retreat When Not on One's Own Premises*, 18 A.L.R. 1279 (1922) ("If the person assailed is without fault, and in a place where he has a right to be, and put in reasonable apparent danger of losing his life or receiving great bodily harm, he need not retreat, but may stand his ground, repel force by force, and if, in the *reasonable* exercise of his right of self-defense, he kills his assailant, he is justified.") (emphasis added).  
<sup>71</sup> Catalfamo, *supra* note 29, at 505.  
<sup>72</sup> *Id.* at 508.  
<sup>73</sup> *Id.*  
<sup>74</sup> Miller, *supra* note 28, at 1340.  
<sup>75</sup> FLA. STAT. § 776.013 (2005).  
<sup>76</sup> *Id.* at § 776.013 (3) ("A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.")  
<sup>77</sup> *Id.* at § 776.013 (1).  
<sup>78</sup> In a court of law, these 911 remarks likely would be admissible in evidence under either an excited utterance theory or a present sense impression theory. See Fed. R. Evid. 803(2)–(3).  
<sup>79</sup> George Zimmerman, through his attorney, denied the allegations and the authorities found no gun on Mr. Zimmerman's person. See Josh Voorhees, *Shellie Zimmerman Changes Her Story, Says George Didn't Threaten Her With a Gun*, SLATE (Sept. 10, 2013, 1:11 PM), [http://www.slate.com/blogs/the\\_slatest/2013/09/10/george\\_zimmerman\\_gun\\_shellie\\_zimmerman\\_changes\\_her\\_story\\_says\\_husband\\_didn.html](http://www.slate.com/blogs/the_slatest/2013/09/10/george_zimmerman_gun_shellie_zimmerman_changes_her_story_says_husband_didn.html).  
<sup>80</sup> Miller, *supra* note 28, at 1348 (citing The Ku Klux Klan Organization and Principles (1868), reprinted in DOCUMENTS OF AMERICAN HISTORY 498–500 (Henry Steele Commager ed., Prentice Hall 1973)).  
<sup>81</sup> See Alex Altman, *Beyond Trayvon: How "Stand Your Ground" Laws Spread from Florida to Half the U.S.*, TIME (Mar. 28, 2012), <http://swampland.time.com/2012/03/28/beyond-trayvon-how-stand-your-ground-laws-spread-from-florida-to-half-the-u-s/>.  
<sup>82</sup> *Id.*

<sup>83</sup> See Ben Montgomery, *Florida's "Stand Your Ground Law" was Born of 2004 Case, but Story Has Been Distorted*, TAMPA BAY TIMES (Apr. 14, 2012), <http://www.tampabay.com/news/publicsafety/floridas-stand-your-ground-law-was-born-of-2004-case-but-story-has-been/1225164>.

<sup>84</sup> Chris W. Cox, *Castle Doctrine Legislation: Protecting Your Right to Protect Yourself*, NRA INSTITUTE OF LEGISLATIVE ACTION (Apr. 1, 2012), <http://www.nraia.org/news-issues/articles/2012/castle-doctrine-legislation-protecting-your-right-to-protect-yourself.aspx>. See generally CTR. FOR MEDIA & DEMOCRACY, *Press on ALEC Exposed*, SOURCEWATCH, [http://sourcewatch.org/index.php?title=Press\\_on\\_ALEC\\_Exposed](http://sourcewatch.org/index.php?title=Press_on_ALEC_Exposed) (last modified, Jul. 24, 2013).

<sup>85</sup> Robert J. Spitzer, *The NRA's silent motive*, SALON (Apr. 3, 2012), [http://www.salon.com/2012/04/03/the\\_nras\\_silent\\_motive/](http://www.salon.com/2012/04/03/the_nras_silent_motive/). See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>86</sup> *NRA Presents ALEC Model Legislation in Grapevine, Texas*, NRA INSTITUTE OF LEGISLATIVE ACTION (Aug. 12, 2005), [http://www.prwatch.org/files/NRA\\_2005.png](http://www.prwatch.org/files/NRA_2005.png). See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>87</sup> Mike McIntire, *Conservative Nonprofit Acts as a Stealth Business Lobbyist*, N.Y. TIMES (Apr. 21, 2012), <http://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html?pagewanted=all>. See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>88</sup> *NRA Presents ALEC Model Legislation in Grapevine, Texas*, NRA INSTITUTE OF LEGISLATIVE ACTION (Aug. 12, 2005), [http://www.prwatch.org/files/NRA\\_2005.png](http://www.prwatch.org/files/NRA_2005.png). See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>89</sup> Adam Weinstein, *How the NRA and Its Allies Helped Spread a Radial Gun Law Nationwide*, MOTHER JONES (June 7, 2012, 3:10AM), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground>. See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>90</sup> Mike McIntire, *Conservative Nonprofit Acts as a Stealth Business Lobbyist*, N.Y. TIMES (Apr. 21, 2012), <http://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html?pagewanted=all>. See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>91</sup> See *Shoot First Laws Policy Summary*, L. CENTER TO PREVENT GUN VIOLENCE (July 18, 2013), <http://smartgunlaws.org/shoot-first-laws-policy-summary/>. See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>92</sup> Press release, *ALEC Statement on 'Stand Your Ground' Legislation*, American Legislative Exchange Council (Mar. 26, 2012), <http://www.alec.org/alec-statement-on-stand-your-ground-legislation-32612/>. See generally CTR. FOR MEDIA & MEDIA & DEMOCRACY, *supra* note 84.

<sup>93</sup> David Ingram, *Conservative group retreats on "stand your ground,"* REUTERS (Apr. 17, 2012), <http://www.reuters.com/article/2012/04/17/usa-alec-idUSL2E8FH7DY20120417?feedType=RSS&feedName=everything&virtualBrandChannel=11563>.

<sup>94</sup> *Id.* See generally CTR. FOR MEDIA & DEMOCRACY, *supra* note 84.

<sup>95</sup> CTR. FOR MEDIA & DEMOCRACY, *ALEC at 40: Turning Back the Clock on Prosperity and Progress*, SOURCEWATCH (Aug. 2013), [http://www.sourcewatch.org/images/8/88/ALEC\\_report\\_2013.pdf](http://www.sourcewatch.org/images/8/88/ALEC_report_2013.pdf).

<sup>96</sup> Specific state bills enacted into law are as follows: 2006 Ala. Acts 303; S. 283, 2006 Leg., Reg. Sess. (Ala. 2006); 2013 Ala. Acts 283, S.B. 286, 2013 Leg., Reg. Sess. (Ala. 2013); S. 200, 24th Leg., 2nd Sess. (Alaska 2006); H.R. 24, 28th Leg., 1st Sess. (Alaska 2013); S. 1145, 47th Leg., 2nd Reg. Sess. (Ariz. 2006); SB 1469 (Ariz. 2011) HB 2629 (Ariz. 2010); S. 436, 2006 Leg., Reg. Sess. (Fla. 2005); S. 396, 148th Gen. Assemb., Reg. Sess. (Ga. 2006); S. 1441, 58th Leg., 2nd Reg. Sess. (Idaho 2006); H.R. 1028, 114th Gen. Assemb., 2nd Reg. Sess. (Ind. 2006); S. 1, 117th Gen. Assemb., 2nd Reg. Sess. (Ind. 2012); S. 366, 2006 Leg., Reg. Sess. (Kan. 2006); S. 38, 2006 Leg., Reg. Sess. (Ky. 2006); H.R. 89, 2006 Leg., Reg. Sess. (La. 2006); 2006 Mich. Acts 309; S. 2426, 2006 Leg., Reg. Sess. (Miss. 2006); S. 62, 94th Gen. Assemb., 1st Reg. Sess. (Mo. 2007); H.R. 228, 61st Leg., Reg. Sess. (Mont. 2009); Assemb. 321, 76th Leg., Reg. Sess. (Nev. 2011); S. 88, 2011 Gen. Court, Reg. Sess. (N.H. 2011); H.R. 650, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011); H.R. 1319, 60th Assemb., Reg. Sess. (N.D. 2007); S. 184, 127th Gen. Assemb., Reg. Sess. (Ohio 2008); H.R. 2615, 50th Leg., 2nd Reg. Sess. (Okla. 2006); H.R. 40, 2011 Gen. Assemb., Reg. Sess. (Pa. 2011); H.R. 4301, 2006 Gen. Assemb., 116th Sess. (S.C. 2006) H.R. 1134, 2006 Leg., 81st Sess. (S.D. 2006); H.R. 1907, 104th Gen. Assemb., Reg. Sess. (Tenn. 2007); S. 378, 2007 Leg., 80 Sess. (Tex. 2007); S. 145, 2008 Leg., Reg. Sess. (W.Va. 2008); Assemb. 69, 2011 Leg., Reg. Sess. (Wis. 2011); H.R. 137,

2008 Leg., Reg. Sess. (Wyo. 2008). See generally Chandler B. McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries* 39–40 (Nat'l Bureau of Econ. Research, Working Paper No. 18187, 2012), available at <http://www.nber.org/papers/w18187>; CTR. FOR MEDIA & DEMOCRACY, *supra* note 84; *Shoot First Laws Policy Summary*, *supra* note 91.

<sup>97</sup> The study, conducted using standard regression procedures, measured the causal effects within state variations, while controlling for potential confounding variables, in SYG laws to examine their effect on homicides and violent crime. Anton Strezhnev, *Some More Evidence That Florida's Stand Your Ground Laws Increased Firearm Homicide Rates*, CAUSAL LOOP (Jul. 16, 2013, 3:29 PM), <http://causalloop.blogspot.com/2013/07/some-more-evidence-that-floridas-stand.html>.

<sup>98</sup> Mark Hoekstra & Cheng Cheng, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from the Castle Doctrine* 2, 4, 16–17 (Nat'l Bureau of Econ. Research, Working Paper No. w18134, 2012), available at <http://ssrn.com/abstract=2079878>.

<sup>99</sup> *Id.* at 4, 28.

<sup>100</sup> *Id.* at 4–5, 23.

<sup>101</sup> McClellan & Tekin, *supra* note 96, at 23–24.

<sup>102</sup> *Id.*

<sup>103</sup> Centers for Disease Control.

<sup>104</sup> McClellan & Tekin, *supra* note 96, at 23–24.

<sup>105</sup> Strezhnev, *supra* note 97 (“Because of the vagueness of the ‘presumption of reasonable fear,’ and the absence of many third-party witnesses, SYG laws stack the deck to favor the assailant by raising the prosecution’s evidentiary burden.”).

<sup>106</sup> Robert J. Spitzer, *Perspectives on the ‘Stand Your Ground’ Movement* (forthcoming 2013).

<sup>107</sup> *Id.* at 11–13. Prof. Spitzer analyzes empirical studies and compared crime rates before and after Stand Your Ground laws were passed in “model” states to crime trends in the “blind” states where there was no Stand Your Ground law. This practice is standard in social science policy evaluation studies. See *id.* The empirical studies created “indicators” that were adjusted for permutations in state economic conditions, variances in state policing and law enforcement policies, and demographic composition shifts. *Id.* These indicators allowed for several different empirical specifications, in which the researchers’ model could be applied. *Id.* The findings “suggest that their key results are robust to alternative specifications of the empirical model.”

<sup>108</sup> *Id.* at 13.

<sup>109</sup> Strezhnev, *supra* note 97 (“While the method employed by Prof. Spitzer—parametric regression—is a ubiquitous and powerful tool in analyzing causal inference, it relies heavily on a standard regression model.”). Traditionally, this method can lead to false conclusions when the model does not run parallel to the data. *Id.* To make a positive correlation to whether “x causes z” one must compare the factual (actual event) to the counterfactual (what would have happened if a factor had been different). *Id.* The problem with Spitzer’s reliance on the expert’s causal inferences on the effect of Stand Your Ground law is that the studies have no counterfactual information. *Id.* Only the result is known. *Id.* In most cases, the counterfactual is estimated based on the data given. *Id.* Ideally, it should be identical to the factual, with variance in only one characteristic. *Id.* In this case, Stand Your Ground laws and violent crime, as opposed to just violent crime rates alone. *Id.* But, to date, no state has instituted identical Stand Your Ground legislation, so we have no dependable counterfactual reference point. *Id.*

<sup>110</sup> Strezhnev, *supra* note 97. Instead of regression, Strezhnev employs the Synthetic Control Method developed by Abadie, Diamond, and Hainmueller to estimate the effect of Florida’s 2005 Stand Your Ground law on firearm homicide rates. *Id.* Strezhnev contends that his use of synthetic control methods compares the factual time series of the outcome variable in a unit exposed to the treatment (Florida) with a “synthetic” counterfactual constructed by weighting a set of “donor” units not exposed to the treatment (states without Stand Your Ground) such that the synthetic control matches the factual unit as closely as possible on potential confounding variables and pre-treatment outcomes. *Id.* By forcing the weights to be positive and sum to one, this method ensures that the estimated counterfactual stays within the bounds of the data, thereby guarding against exaggerated causal claims. *Id.*

<sup>111</sup> The trajectory of Florida’s homicide rate is certainly unusual and difficult to attribute to pure chance. Strezhnev, *supra* note 97. Supporters of Florida’s Stand Your Ground law point to reductions in the violent

crime rate since 2005 as evidence that the law's deterrent effect is working. *Id.* However, just looking at a trend as evidence of causation makes no sense, because in order to assign causality, one needs to make a comparison with some counterfactual case with “indicators.” *Id.* Violent crime rates in Florida have been declining overall since 2000, so it is unlikely that the downward trend would not have existed had Stand Your Ground not been passed. *Id.*

<sup>112</sup> Strezhnev, *supra* note 97.

<sup>113</sup> Hoekstra & Cheng, *supra* note 98, at 2, 4, 16–17.

<sup>114</sup> Michael L. Radelet & Glenn L. Pierce, *Race and Death Sentencing in North Carolina, 1980–2007*, 89 N.C. L. REV. 2119, 2120 (2011) (“Odds of a death sentence for those suspected of killing Whites are approximately three times higher than the odds of a death sentence for those suspected of killing Blacks.”); *Racial Disparity in NYPD Stops-and-Frisks: Preliminary Report of UF-250 Data From 2005 Through June 2008*, CENTER FOR CONSTITUTIONAL RIGHTS (January 15, 2009), <http://ccrjustice.org/files/Report-CCR-NYPD-Stop-and-Frisk.pdf> (outlining disparity in NYPD “stop and frisk” policy); *Report to Senate and House Committees on the Judiciary, Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* (February 26, 1990), U.S. GOVERNMENT ACCOUNTABILITY OFFICE, <http://www.gao.gov/assets/220/212180.pdf>.

<sup>115</sup> Spitzer, *supra* note 106.

<sup>116</sup> See *McCleskey v. Kemp*, 481 U.S. 279, 287 (1987) (citing the statistical study performed by Professors David C. Baldus, Charles Pulaski, and George Woodworth, which showed that defendants received the death sentence 4.3 times more when the victim was white than black even when 39 nonracial variables were considered for racial disparity); see also *Report to Senate and House Committees on the Judiciary*, *supra* note 114 (finding 82% of the 28 studies evaluated provided by the committee evidence that the race of the victim influenced whether a defendant would receive a death sentence).

<sup>117</sup> Sarah Childress, *Is There Racial Bias in “Stand Your Ground” Laws*, FRONTLINE (July 31, 2012, 12:40 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/>; see also Robert Cross, *How to Prevent the Next Trayvon Martin: Repealing Stand Your Ground Laws that Provide a License for Vigilantism* (forthcoming 2013).

<sup>118</sup> John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE, 9 (July 2013), available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

<sup>119</sup> *Id.*

<sup>120</sup> John Roman, *Is American Criminal Justice Color-Blind? The Statistics Say No*, METRO TRENDS BLOG (July 16, 2013), <http://blog.metrotrends.org/2013/07/american-criminal-justice-color-blind-statistics/>.

<sup>121</sup> This conduct does not violate Florida law. See FLA. STAT. § 776.012(2) (2005).

<sup>122</sup> See, e.g., Mollie Reilly, *Michael Bloomberg: George Zimmerman Verdict Shows ‘Shoot-First’ Laws Must Go*, THE HUFFINGTON POST (June 15, 2013 11:33AM), [http://www.huffingtonpost.com/2013/07/14/michael-bloomberg-george-zimmerman\\_n\\_3595064.html](http://www.huffingtonpost.com/2013/07/14/michael-bloomberg-george-zimmerman_n_3595064.html).



PREPARED STATEMENT OF DAVID LABAHN, PRESIDENT AND CHIEF EXECUTIVE  
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**Testimony of David LaBahn**

**Before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights  
and Human Rights**

**Hearing on “Stand Your Ground” Laws: Civil Rights and Public Safety Implications of  
the Expanded Use of Deadly Force”**

**October 29, 2013**

Chairman Durbin, members of the Subcommittee, thank you for the opportunity to testify before you today. My name is David LaBahn and I am the President and CEO of the Association of Prosecuting Attorneys (APA), a private non-profit whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. APA is the only national organization to include and support all prosecutors, including both appointed and elected prosecutors, as well as their deputies and assistants, whether they work as city attorneys, city prosecutors, district attorneys, state’s attorneys, attorneys general or U.S. Attorneys.

On behalf of APA, I am pleased to have the opportunity to address the issues surrounding the vast expansion of self-defense referred to as Stand Your Ground laws. As prosecutors, we seek to do justice for victims and hold offenders accountable for their actions, especially in cases where a life has been violently ended whether by firearm or other deadly weapon. Since 2009, APA has tracked the legislative progression of Stand Your Ground and assisted prosecutors and other law enforcement professionals who have been working to navigate these expansive new laws. I have attached to my testimony the APA’s Statement of Principles regarding Stand Your Ground laws, which are commonly understood as laws that expand the so-called “Castle Doctrine.” As our Statement of Principles makes clear, Stand Your Ground laws have raised a number of troubling concerns.

Prosecutors and their professional associations have overwhelmingly opposed Stand Your Ground laws when the measures were in their respective legislatures. The concerns expressed include the limitation or even elimination of prosecutors’ ability to hold violent criminals accountable for their acts. However, even with this opposition, many states have passed Stand Your Ground legislation into law. Many of these laws include provisions that diminish or eliminate the common law “duty to retreat”<sup>1</sup> outside of the home, change the burden of proving reasonableness to a presumption, and provide blanket civil and criminal immunity.

<sup>1</sup> It should be noted that at common law the “duty to retreat” is limited to situations where the retreat can be done safely and not place the victim in a more dangerous situation.



These provisions run counter to the role of prosecutors as upholders of justice and the integrity of our criminal justice system. By expanding the realm in which violent acts can be committed with the justification of self-defense, Stand Your Ground laws have negatively affected public health and undermined prosecutorial and law enforcement efforts to keep communities safe. The presumptions and immunity provisions have undermined standard police procedures, preventing law enforcement from arresting and detaining criminals, and have stymied prosecutors, deterring them from prosecuting people who claim self-defense even while killing someone in the course of committing other unlawful activity. In some states, courts have interpreted the law to create an unprecedented procedural hurdle in the form of immunity hearings, which single out self-defense cases and effectively transfer the role of the jury over to judge. Moreover, because these laws are unclear, there has been inconsistent application throughout the states and even within respective states. Prosecutors, judges, police officers, and ordinary citizens have been left to guess what behavior is legal and what is criminal. Even with the best efforts to implement these broad measures, defendants, victims' families and friends, investigators, prosecutors, defense attorneys, trial courts and appellate courts have been forced into a case-by-case analysis with no legal certainty as to what they can expect once a life has been taken.

As a result, Stand Your Ground laws provide safe harbors for criminals and prevent prosecutors from bringing cases against those who claim self-defense after unnecessarily killing or injuring others. For example, in a February 2008 Florida case, a 29-year-old drug dealer named Tavarious China Smith killed two men in two separate incidents, the first drug-related, and the second over retaliation for the first. Though he was engaged in unlawful activity in both instances – selling drugs during the first shooting and using an illegal gun in the second – prosecutors had to conclude that both homicides were justified under the Florida's Stand Your Ground law. Unfortunately, this example is not an anomaly. A recent study concluded that a majority of defendants shielded by Stand Your Ground laws had arrest records prior to the homicide at issue.

The origin of Stand Your Ground legislative proposals appears to be Florida in 2005. It is our position that common law sufficiently protected people's rights to defend themselves, their homes, and others. The proper use of prosecutorial discretion ensured that lawful acts of self-defense were not prosecuted, and I have not seen evidence to the contrary. After reviewing the legislative history of the Florida provision, the case used to justify the need for this broad measure involved no arrest or prosecution. The law enforcement community responded properly to the shooting and completed a thorough investigation, and the homeowner was never charged by the prosecutor in the lawful exercise of self-defense.



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Because the provisions of Stand Your Ground measures vary from state to state, I will attempt to summarize some of the main provisions which have caused prosecutors difficulty in uniformly enforcing the law and have ultimately led to disparate results in cases where a victim was killed yet no one was held accountable for the murder.

First, the meaning of “unlawful activity” needs to be clarified. Many states have extended Stand Your Ground protection to people who are in a place where they have a right to be and who are not engaged in an unlawful activity. Therefore, what is lawful and what is unlawful? Can a drug dealer defend his open air drug market? If the individual is a felon, does he have a right to kill another with a firearm and claim the Stand Your Ground defense?

Second, immunity is rarely granted in criminal law, with the few exceptions existing in order to encourage cooperation with law enforcement and the judicial system. The legislatures should remove the immunity provisions and clarify that self-defense is an affirmative defense, meaning that once the defendant provides some evidence that he or she was acting in self-defense, the onus is on the prosecution to prove that he or she was not acting in self-defense. This would bring this new defense within the well-recognized and used self-defense procedure.

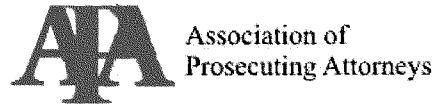
Third, the elimination of the Stand Your Ground laws’ presumptions will eliminate many dangerous effects. The legislatures should amend the law to replace the presumptions with inferences. This will remove one of the greatest obstacles to law enforcement and prosecutors in pursuing justice while adequately protecting the right to self-defense.

Fourth, the statutes should be amended to prevent an initial aggressor from claiming self-defense. Some laws contain a loophole that enables a person to attack another with deadly force and later use Stand Your Ground to justify killing the person he or she attacked if that person responds with like force and the initial aggressor cannot escape. At a minimum, the initial aggressor should be required to withdraw before being allowed to claim self-defense.

Finally, we recommend that the law be limited so that Stand Your Ground cannot be raised when the person on whom force is used is a law enforcement officer, regardless of whether the person using force knew that such person was in law enforcement. Statutes should be amended to read that Stand Your Ground should not be applicable against a law enforcement officer when that law enforcement officer is acting within the course and scope of his/her duties.

Taken together, I believe these reforms to the various Stand Your Ground laws will help minimize their detrimental effects and restore the ability of investigators and prosecutors to fully enforce the law and promote public safety, while continuing to respect the rights of law-abiding citizens to protect themselves and their families. Thank you for holding this hearing to inform the Congress and interested parties about the effects of these laws.

*Our Mission is to Support and Enhance the Effectiveness of Prosecutors in Their Efforts to Create Safer Communities*



Statement of Principles

As a national association dedicated to supporting and enhancing the effectiveness of prosecutors in their efforts to create safer communities, the Association of Prosecuting Attorneys (APA) creates this statement of principles regarding expansions to the Castle Doctrine to assist prosecutors in their effort to ensure justice and uphold public safety.

"Castle Doctrine" refers to the Common Law principle that a person has the right to defend against invasion and attack in their own home. In recent years, many jurisdictions have expanded this doctrine.

Castle Doctrine legislation has been expanded to apply to other areas outside the home, has diminished or eliminated the "duty to retreat" and other notable modifications including changing the burden of proving reasonableness to a presumption and providing blanket civil and criminal immunity.

Prosecutors, as upholders of justice and the integrity within our criminal justice system, retain a special role within the community through which confidence in our criminal justice system and public safety are maintained.

The expansion of the Castle Doctrine may have unintended consequences and inhibits the ability of law enforcement and prosecutors to fully hold violent criminals accountable for their acts.

The following statement of principles manifests the commitment of federal, state, local and tribal prosecutors to holding criminals accountable while protecting the rights of self-defense and defense of property.

- The right of self-defense and the right to defend one's home against invasion are well established in Common Law. The proper use of prosecutorial discretion ensures that justified acts of homicide are not prosecuted. For these reasons, expansions of the Castle Doctrine are unnecessary.
- Replacing the burden of proving reasonableness with a presumption of reasonableness eliminates the use of prosecutorial discretion. As upholders of justice and enforcers of the law, this is a key function of prosecutors that should not be taken away or diminished.
- Expanding the Castle Doctrine to public areas outside the home places heavier burdens on law enforcement when responding to such calls or incidents.
- Expansions to the Castle Doctrine negatively affect public health and the community's sense of safety by undermining prosecutorial and law enforcement efforts to keep communities safe as a result of expanding the realm in which violent acts can be committed with the justification of self-defense or defense of property.

- Any expansion to the Castle Doctrine must be based in research. Prosecutors and law enforcement agencies need to work with legislatures in collecting and analyzing data and evidence to support any legislative changes made to the Castle Doctrine.
- Use of the Castle Doctrine as a criminal and civil defense should be closely studied to ensure that expansions to the legislation are not being abused, and gaps within the legislative scheme are closed.

PREPARED STATEMENT OF ILYA SHAPIRO, SENIOR FELLOW IN CONSTITUTIONAL  
STUDIES, CATO INSTITUTE, WASHINGTON, DC



ILYA SHAPIRO  
*Senior Fellow in Constitutional Studies*

**Testimony before the U.S. Senate Judiciary Committee's Subcommittee on the  
Constitution, Civil Rights, and Human Rights**

**Hearing on "'Stand Your Ground' Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force"**

**Ilya Shapiro**  
**Senior Fellow in Constitutional Studies, Cato Institute**

**October 29, 2013**

Chairman Durbin, Ranking Member Cruz, and distinguished members of the Subcommittee, thank you for this opportunity to discuss "stand your ground" (SYG) laws and other protections for the constitutional right to armed self-defense.

It is perhaps most appropriate that this hearing was originally scheduled for September 17, Constitution Day, which marks the anniversary of the signing of our Founding document in 1787. On that day, all publicly funded educational institutions have to provide programming on the history of the Constitution. My own organization, the Cato Institute, which thankfully isn't publicly funded, celebrates Constitution Day by releasing our annual *Cato Supreme Court Review*—now in its 12th year—and hosting a conference that reviews the previous Supreme Court term and previews the next one. In reality, of course, every day is Constitution Day, so please excuse me if I have to leave this hearing early to travel to the National Constitution Center in Philadelphia to debate the constitutional issues attending the recent government shutdown and our ongoing budget and debt-ceiling disputes.

Now, by way of overview, let me note that SYG laws are a tremendously misunderstood aspect of the debate over firearms regulation and criminal-justice reform. Notwithstanding recent efforts to politicize the issue—sparked by some truly unfortunate events that have nothing to do with "standing your ground"—there's nothing particularly novel, partisan, or ideological about these laws. All they do is allow people to assert their right to self-defense in certain circumstances without having a so-called "duty to retreat." The SYG principle has been enshrined in the law of a majority of U.S. states for over 150 years, originating as judge-made common law and eventually being codified by statute.

At present, about 31 states—give or take, depending on how you count—have some type of SYG doctrine, a vast majority of which had it as part of their common law even before legislators took any action. So even if these statutes were repealed tomorrow, SYG would still be the law in most states because of preexisting judicial decisions. And, of course, some states, like California and Virginia, maintain SYG only judicially, without having passed any legislation.

It's also worth noting that of the 15 states that have passed variations of the law since 2005, the year Florida's model legislation became law, eight—a majority—had

Democratic governors when the laws were enacted. None issued a veto. Democratic governors who signed SYG bills, or otherwise permitted them to become law, include Kathleen Blanco of Louisiana, Jennifer Granholm of Michigan, Brian Schweitzer of Montana, John Lynch of New Hampshire, Brad Henry of Oklahoma, Phil Bredesen of Tennessee, Joe Manchin of West Virginia, and Janet Napolitano of Arizona. The bills in Louisiana and West Virginia passed with Democratic control of both houses in the state legislatures, in 2006 and 2008, respectively. Even Florida's supposedly controversial law passed the state senate unanimously and split Democrats in the state house. Conversely, many so-called "red states," or those that have a significant gun culture—such as Arkansas, Missouri, Nebraska, and Wyoming—impose a duty to retreat. And even in the more restrictive states, such as New York, courts have held that retreat isn't required before using deadly force in the home or to prevent a robbery, kidnapping, or rape.

Having outlined the current state of play, let's step back and examine the development of the law regarding the right to self-defense and the use of deadly force, to see how SYG emerged and understand what it means.

It's a universal principle of law that a person is justified in using force (but not deadly force) when and to the extent that he or she reasonably believes that such conduct is necessary to defend him- or herself or someone else against an imminent use of unlawful force. Where there is no duty to retreat—as in most of the United States—a person is further justified in using *deadly* force if he or she reasonably believes it to be necessary to prevent imminent death or great bodily harm to him- or herself or someone else, or to prevent the imminent commission of a forcible felony (such as rape or armed robbery). That's the norm throughout the United States: that deadly force may be used only in cases of "imminent death or great bodily harm" that someone "reasonably believes" can only be prevented by using lethal force.

It's not an easy defense to assert, and it certainly doesn't mean that whenever you're afraid, you can shoot first and ask questions later. Every day, criminals assert flimsy self-defense claims that get rejected by judges and juries regardless of whether the given state has a SYG law. These laws are not a license to be a vigilante, commit murder, or otherwise behave recklessly or negligently with firearms and other deadly weapons. They simply protect law-abiding citizens from having to leave a place where they're allowed to be simply because criminals show up and threaten them. In other words, in most states, victims (or would-be victims) of a violent crime don't have to try to run away before defending themselves.

That's why the core of the debate over SYG—the real one, not the phony war we've been having lately—is really one about the duty to retreat. This is not a new debate, but something that's been going back-and-forth in Anglo-American law for centuries. In ancient Britain, when the deadliest weapons were swords, a duty to retreat made sense and greatly reduced everything from violent incidents to blood feuds. Firearms and especially handguns were also not as widespread in modern Britain until fairly recently, and British law continues to reflect the historic "deference to the constabulary," by which the King owed a duty of protection to his subjects. That deference to the sovereign was never part of the American tradition, for understandable reasons. In this country, at any given time about half the states may have had SYG laws, and today's split is well within historical norms.



Indeed, despite what gun prohibitionists claim, the no-retreat rule has deep roots in traditional American law. At the Supreme Court, SYG dates back to the 1895 case of *Beard v. United States*, in which the great Justice John Harlan wrote for a unanimous Court that the victim “was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.”

In jurisdictions that do have a duty to retreat, people who were at genuine risk of death or grievous bodily harm can be prosecuted and sent to prison for very long terms, even if they were doing nothing but defending themselves. That’s controversial for any number of reasons, one of which is that the law never demands any other type of duty of people who face imminent violence. You don’t have to give up your wallet. You don’t have to reason or call for help. You don’t have to say “uncle” or apologize. But you do have to retreat. That’s odd. A mugger doesn’t have the right to demand someone’s wallet, so why should an aggressor have the right to demand something else to which he or she has no right?—that you leave or retreat from a place where you have every right to be.

The old “duty to retreat” rule made it hard to invoke self defense even if you had faced an immediate threat of assault: “you could have run away,” the state would argue, and conviction would follow. Among those who often lost out under that old rule were domestic violence victims who turned on their assailants. Feminists pointed out that “you could have run away” may not work well when faced with a stalker or vengeful ex.

SYG laws are thus designed to clarify the law in order to protect the law-abiding citizen who is under attack by a criminal. It’s slightly less controversial in the case of a home: It’s bad enough to have your home burglarized and your life threatened, but to have to hire a lawyer and fend off a misguided prosecutor or personal-injury lawyer defending an injured criminal was considered too much for many lawmakers. That’s how we have the Castle Doctrine, which holds that you don’t need to retreat when your home is attacked. Nearly all states recognize some version of the Castle Doctrine, such that modern laws presume that someone forcing entry into a house is doing so with the intent to commit a felony and that the use of defensive force by residents is due to a reasonable fear of bodily harm or death.

When you extend that doctrine to public spaces—as most states do—you get SYG. What’s been overlooked in the current debate about these laws is that they only apply to people under attack. Again, the rationale is that it’s bad enough for an innocent person to find him- or herself threatened by a criminal, but to then have to worry about whether he or she should retreat, lest he or she face prosecution or lawsuits for hurting the criminal, is simply too much to ask. As the great progressive Justice Oliver Wendell Holmes wrote for a unanimous Supreme Court in the 1921 case of *Brown v. United States*, “detached reflection cannot be demanded in the presence of an uplifted knife.” Nearly a century later—and regardless of one’s views on the scope of the Second Amendment or appropriate types of gun regulations—I don’t think we can demand more of crime victims trying to defend themselves.

Of course, any self-defense rule bears the potential for injustice or unfairness. For example, there can be an altercation between two people, one of whom is left dead and the other whose invocation of self-defense is dubious—but there aren’t any witnesses or

other evidence to contravene it beyond the standard required for criminal conviction. That's the Trayvon Martin case, where only George Zimmerman knows what actually happened. These sorts of cases implicate the availability of a self-defense justification for taking someone's life rather than the existence of a duty to retreat. If Zimmerman was the aggressor, shooting and killing Trayvon for no lawful reason, then he committed murder and has no self-defense rights at all, whether the incident had taken place in a SYG jurisdiction or not. If Trayvon attacked Zimmerman, then the only question is whether Zimmerman reasonably believed that his life was in danger, not whether he could've retreated. And if Zimmerman provoked their confrontation, even if Trayvon eventually overpowered him, he lost the protections of the SYG law.

In short, hard, emotionally wrenching cases make not only for bad law, but for skewed policy debates. The members of this committee are of course well familiar with that demagogic dynamic given the flurry of gun-control proposals after Sandy Hook. While anti-gun lobbyists have used both that tragedy and Trayvon Martin's death to pitch all sorts of legislative changes, what they really seem to be targeting, as it were, is the right to armed self-defense. With SYG laws, yes, prosecutors may need to take more care to marshal a show of actual evidence to counter claims of self-defense rather than simply arguing that the shooter could've retreated. For those who value due process in criminal justice—a group that should emphatically include members of historically mistreated minorities—that should count not as a bug but a feature.

And it turns out that threats to constitutional criminal procedure come not just from domestic lobbies but also from abroad. Just two weeks ago, the United Nations latched onto Trayvon Martin's death to call on the United States to review its criminal laws, citing our international treaty obligations. The press release from the so-called independent human rights experts was characteristically short on specifics, but if the UN claim is that we have some obligation to change our SYG laws, reduce the burden of proof for criminal convictions, or dilute our prohibition against double-jeopardy—which Article 14, Section 7 of the International Covenant on Civil and Political Rights actually forbids—then I agree with UCLA law professor Eugene Volokh's suggestion that the UN “go take a hike.”

Finally, I would be remiss if I didn't mention before concluding one episode in the leadup to this hearing that has unfortunately contributed to the sensationalism surrounding discussions of SYG laws: Chairman Durbin's attempt to intimidate businesses and organizations that have had any affiliation with the American Legislative Exchange Council (because ALEC had sponsored model SYG legislation, among other reforms that may not have curried Chairman Durbin's favor). Chairman Durbin's letter noted that responses would be included in this hearing's record, but just to be safe, I'm submitting with this statement both the Chairman's letter and the response by Cato's president, John Allison.

Thank you again for having me. I welcome your questions.

Attachments:

1. Letter from Sen. Richard Durbin to Cato President John Allison, Aug. 6, 2013.
2. Letter from Cato President John Allison to Sen. Richard Durbin, Aug. 8, 2013.

RICHARD J. DURBIN  
 \_\_\_\_\_  
 ILLINOIS  
 \_\_\_\_\_  
 ASSISTANT MAJORITY LEADER

**United States Senate**  
 Washington, DC 20510-1504

COMMITTEE ON APPROPRIATIONS  
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 COMMITTEE ON FOREIGN RELATIONS  
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 COMMITTEE ON THE JUDICIARY  
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 COMMITTEE ON RULES  
 AND ADMINISTRATION

August 6, 2013

John Allison  
 President and CEO  
 Cato Institute  
 1000 Massachusetts Ave, NW  
 Washington, DC 20001

Dear Mr. Allison,

I write to seek information regarding your organization's position on "stand your ground" legislation that was adopted as a national model by the American Legislative Exchange Council (ALEC).

ALEC describes itself as a think tank that develops model bills for state legislators. In 2005, ALEC approved the adoption of model "stand your ground" legislation entitled the "Castle Doctrine Act."<sup>i</sup> This model legislation was based on Florida's "stand your ground" law<sup>ii</sup>, and it changes the criminal law regarding self-defense and provides immunity for certain uses of deadly force.

In years subsequent to 2005, ALEC cited the introduction and enactment of state bills based on its model "stand your ground" legislation as "ALEC's successes."<sup>iii</sup> As recently as March 2012, ALEC issued a statement defending its model "stand your ground" legislation from criticism after the killing of Trayvon Martin in Florida.<sup>iv</sup> On April 17, 2012, ALEC issued a press release stating that it was eliminating the task force that had initially approved the model "stand your ground" legislation.<sup>v</sup> However, ALEC has never issued a statement retracting the organization's approval of its model "stand your ground" legislation, nor has ALEC ever issued a statement calling for any state laws based on ALEC's model "stand your ground" legislation to be repealed.<sup>vi</sup>

Although ALEC does not maintain a public list of corporate members or donors, other public documents indicate that your organization funded ALEC at some point during the period between ALEC's adoption of model "stand your ground" legislation in 2005 and the present day. I acknowledge your organization's right to actively participate in the debate of important political issues, regardless of your position, and I recognize that an organization's involvement with ALEC does not necessarily mean that the organization endorses all positions taken by ALEC. Therefore I am seeking clarification whether organizations that have funded ALEC's operations in the past currently support ALEC and the model "stand your ground" legislation.

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 (202) 224-2182  
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 250 W. CHERRY STREET  
 SUITE 1150  
 CARBONDALE, IL 62901  
 (618) 351-1122

[durbin.senate.gov](http://durbin.senate.gov)

I ask that you please reply to this letter by answering yes or no in response to the two questions below. Please feel free to provide additional information explaining your yes or no response.

1. Has Cato Institute served as a member of ALEC or provided any funding to ALEC in 2013?
2. Does Cato Institute support the "stand your ground" legislation that was adopted as a national model and promoted by ALEC?

Please provide a response to this letter by September 1, 2013. Note that I am sending similar letters to other organizations that have been identified as ALEC funders at some point between 2005 and today. In September, I plan to convene a hearing of the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights to examine "stand your ground" laws, and I intend to include the responses to my letters in the hearing record. Therefore, please know that your response will be publicly available.

Thank you for your attention to this request. Please feel free to contact Dan Swanson or Stephanie Trifone on my staff at 202-224-2152 if you have any questions. I look forward to receiving your response.

Sincerely,



Richard J. Durbin  
United States Senator

<sup>i</sup> See National Rifle Association Institute for Legislative Action, "NRA Presents ALEC Model Legislation in Grapevine, Texas," August 12, 2005, available at [http://www.prwatch.org/files/NRA\\_2005.png](http://www.prwatch.org/files/NRA_2005.png). The text of the ALEC "Castle Doctrine Act" is attached.

<sup>ii</sup> See "ALEC Statement on 'Stand Your Ground' Legislation" – 3/26/12 (stating that "Florida's 'Stand Your Ground' law was the basis for the American Legislative Exchange Council's model legislation"), available at <http://www.alec.org/alec-statement-on-stand-your-ground-legislation-32612/>.

<sup>iii</sup> See "Model Bill Highlights for 2007" stating that "The ALEC Legislation Scorecard tracks ALEC's successes in the states by its model bills that were introduced and those that were enacted." The Scorecard listed among its "legislative highlights" that Maine, North Dakota and Tennessee had introduced or adopted ALEC's model Castle Doctrine Act which "Protects citizens from prosecution or liability if they use a firearm in self defense inside or outside their homes." Available at

[http://web.archive.org/web/20081106040540/http://www.alec.org/AM/Template.cfm?Section=Legislative\\_Scorecard](http://web.archive.org/web/20081106040540/http://www.alec.org/AM/Template.cfm?Section=Legislative_Scorecard)

<sup>iv</sup> See "ALEC Statement on 'Stand Your Ground' Legislation – 3/26/12", supra note ii.

<sup>v</sup> See "ALEC Sharpens Focus on Jobs, Free Markets and Growth — Announces the End of the Task Force that Dealt with Non-Economic Issues," April 17, 2012 press release, available at <http://www.alec.org/alec-sharpens-focus-on-jobs-free-markets-and-growth-announces-the-end-of-the-task-force-that-dealt-with-non-economic-issues/>.

<sup>vi</sup> In contrast, ALEC has issued statements announcing that it had reevaluated its policies and repudiated its involvement on other issues. For example, on March 27, 2012, ALEC issued a press release saying that "[ALEC] today is no longer involved with the private prison industry." This press release stated "ALEC legislators are committed to finding and sharing solutions for the most critical issues facing their states. Sometimes that commitment will require us to reevaluate policies and change course. We are not afraid to do so when the facts demand it." See "Response to Krugman's Erroneous Claims" -3/27/12, available at <http://www.alec.org/alec-response-krugman%e2%80%99s-erroneous-claims/>



August 8, 2013

JOHN A. ALLISON  
*President and CEO*  
*Retired Chairman and CEO, BB&T*

The Honorable Richard C. Durbin  
711 Senate Hart Bldg.  
Washington, D.C 20510

Dear Senator Durbin:

Your letter of August 6, 2013 is an obvious effort to intimidate those organizations and individuals who may have been involved in any way with the American Legislative Exchange Council (ALEC).

While Cato is not intimidated because we are a think tank—whose express mission is to speak publicly to influence the climate of ideas—from my experience as a private-sector CEO, I know that business leaders will now hesitate to exercise their constitutional rights for fear of regulatory retribution.

Your letter thus represents a blatant violation of our First Amendment rights to freedom of speech and to petition the government for a redress of grievances. It is a continuation of the trend of the current administration and congressional leaders, such as yourself, to menace those who do not share your political beliefs—as evidenced by the multiple IRS abuses which have recently been exposed.

Your actions are a subtle but powerful form of government coercion.

We would be glad to provide a Cato scholar to testify at your hearing to discuss the unconstitutional abuse of power that your letter symbolizes.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Allison".

John A. Allison

JAA/ems

PREPARED STATEMENT OF JOHN R. LOTT, JR., PH.D., PRESIDENT, CRIME PREVENTION  
RESEARCH CENTER, SWARTHMORE, PENNSYLVANIA

Testimony before the U.S. Senate Judiciary Committee's Subcommittee on the  
Constitution, Civil Rights, and Human Rights

Hearing on "‘Stand Your Ground’ Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force"

John R. Lott, Jr.  
President, Crime Prevention Research Center

October 29, 2013

Thank you Chairman Durbin, Ranking Member Cruz, and distinguished members of the Subcommittee, for this opportunity to discuss "Stand Your Ground" laws. These laws help allow individuals to defend themselves. This is particularly important in high crime areas.

Over 30 states have adopted laws that remove the requirement for individuals who are defending themselves to retreat.<sup>1</sup> And these laws are hardly new. Some states have had these provisions for decades or even longer. The laws were often passed by overwhelming bipartisan majorities and signed into law by both Democrat and Republican governors. In many other states, such as California and Washington, these provisions originated in common law.

In the case of Florida, the law was passed unanimously by the state senate and by a 94 to 20 vote in the state house in 2005.<sup>2</sup> In 2004, then-state Senator Obama co-sponsored and voted for a bill that significantly broadened Illinois' 1961 Stand Your Ground law by providing immunity from civil liability for people who use deadly force to defend themselves or their property.<sup>3</sup> With Democrats solidly in control of the state legislature and the governorship, this bill received overwhelming support: passing unanimously through state Senate and receiving just two "nay" votes in the state House before being signed by a Democratic governor.<sup>4</sup>

The difference between "Stand Your Ground" and "Castle Doctrine" laws is over where they apply, not what the rule is. Both laws remove the duty to retreat. Castle Doctrine laws apply to attacks within one's home as well as sometimes on one's property. Once you step off your property and onto the sidewalk Stand Your Ground laws apply.

Crime threatens people of all races and all political parties, and it is not surprising that these laws have been enacted with the support of politicians from all races and from both major parties.

Unfortunately, Stand Your Ground laws have recently become a racial issue. President Obama and Attorney General Holder has weighed in, linking race and Stand Your Ground laws.<sup>5</sup> And on ABC News' This Week, Travis Smiley declared: "It appears to me, and I think many other persons in this country that you can in fact stand your ground

unless you are a black man."<sup>6</sup>

But the accusations have everything backwards over who benefits from the law. Poor blacks who live in high-crime urban areas are not only the most likely victims of crime, they are also the ones who benefit the most from Stand Your Ground laws. The laws make it easier for them to protect themselves when the police can't be there fast enough. Therefore, rules that make self-defense more difficult disproportionately impact blacks.

Blacks may make up 16.6 percent of Florida's population but account for 31 percent of the state's defendants invoking the Stand Your Ground defense. Black defendants who invoke this statute to justify their actions are actually acquitted 8 percentage points more frequently than whites who use this very same defense.

As most of you are aware, prior to "Stand Your Ground," citizens had to retreat as far as possible and then announce to the criminal that they were going to shoot. The "Stand Your Ground" law drops the original requirement to retreat. Nevertheless, under the law, lethal force is only justified when a reasonable person would believe that an attacker intends to inflict serious bodily harm or death and the response has to be proportionate to the threat.

One proposal advanced by the Trayvon Martin's family, the "Trayvon Martin Act," would amend Stand Your Ground laws to "make it illegal for a person acting in self-defense if that person was the initial aggressor." But Florida law already states that the Stand Your Ground provision is "not available to a person who . . . initially provokes the use of force against himself or herself, unless: (a) . . . he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant . . . or (b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force."<sup>7</sup>

The bottom line is simple: Under Stand Your Ground, if someone initially provokes another person, they must retreat.

Apparently forgotten are the reasons that "Stand Your Ground" laws exist. They originated to solve the real problems with the requirement to retreat. The required delay sometimes prevented people from defending themselves. Requiring an "appropriate retreat" adds additional confusion to those defending themselves and the concept is left to prosecutors to define. Sometimes overzealous prosecutors claimed that people who defended themselves could have retreated even farther (see Appendix for some cases).

Despite the ruckus over the law after the Zimmerman acquittal, his defense team never raised the "Stand Your Ground" law as a defense. This should be no surprise. After all, if Zimmerman was on his back and Martin held him down (as the forensic and eyewitness evidence indicates), Zimmerman had no option to retreat. So the law was completely

irrelevant.

The tragedies suffered by the Sybrina Fulton with her son Trayvon Martin dying and Lucia McBath's son Jordan Davis would mark any parent for the rest of their lives. But no matter how tragic is Martin's death, it simply had nothing to do with Stand Your Ground laws. While Jordan Davis' killer, Michael Dunn, is currently claiming a Stand Your Ground defense, if a reasonable person would not believe that Davis intended to inflict serious bodily harm or death on Dunn, Dunn should be convicted and severely punished. If what the prosecutors allege is true, Florida's Stand Your Ground law will not protect Dunn.

With so many states having these laws for so many years without controversy, possibly the most surprising fact that no state that has adopted such a law has ever rescinded it. The only way that we can evaluate Stand Your Ground laws is by looking at their net effect on lives saved. In Florida, for example, in contrast to the Martin and Davis cases, there are fifteen cases where black men, who were being threatened, defended themselves and successfully relied on this law in their defense, with their charges either being dropped or they were acquitted.<sup>8</sup>

There are other dramatic cases from around the country where Stand Your Ground laws have saved the lives of blacks. For example, take a case two years ago involving Darrell Standberry in Detroit. Standberry, who was faced by an armed man who was trying to take his car, told WJBK television in Detroit: "If it wasn't for [the] 'stand your ground' law, right now I would be in jail, and my life could've been taken at that point."<sup>9</sup> Other news stories, such as a case from Duval county, Florida, a case decided just a couple weeks after the Zimmerman verdict, have headlines such as: "Man says 'stand your ground' law saved his life."<sup>10</sup>

Those who claim racism point to data compiled by the Tampa Bay Tribune. Up through July 24th this year, the newspaper had collected 112 cases where people charged with murder relied on Florida's Stand Your Ground law, starting with cases filed in 2006. Their "shocking" finding: 72 percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white.<sup>11</sup>

The result for Hispanics, that 80 percent of those who killed Hispanics are not convicted, is never really discussed. If these results really imply discrimination, why would Hispanics in Florida be discriminated against so much more frequently than blacks?

Racism shouldn't be tolerated. Yet, precisely because of its seriousness, false accusations of racism are also unacceptable. Those making explosive claims of racism should carefully back up their claims. Unfortunately, the Tampa Bay Tribune data is being misused. Just because two people are charged with murder doesn't mean the two cases are identical. In particular, black and white victims were usually killed by their own race. Ninety percent of blacks who were killed in cases where Stand Your Ground was invoked as a defense were killed by other blacks. Similarly, the vast majority of those who killed whites were white; and all the people who killed Hispanics were



Hispanics.

Race of Killer and person Killed in Florida's Stand Your Ground Cases			
Race of Person Claiming to have acted in Self-defense	Race of Person Killed		
	Black	White	Hispanic
Black	90.0%	7.7%	0.0%
White	10.0%	84.6%	0.0%
Hispanic	0.0%	7.7%	100.0%

Again, since most blacks are killed by other blacks, the high rate that those who kill blacks face no penalty means that blacks who claim self-defense under the Stand Your Ground law are convicted at a lower rate than are whites. About 69 percent of blacks who raised the Stand Your Ground defense were not convicted compared to 62 percent for whites. Interestingly, Hispanics who raise the Stand Your Ground defense are successful the most often – 78 percent of the time.

If blacks are supposedly being discriminated against because their killers so often are not facing any penalty, wouldn't it also follow that blacks are being discriminated *in favor* of when blacks who claim self-defense under the Stand Your Ground law are convicted at a lower rate than are whites? If this is indeed a measure of discrimination, rather than merely reflecting something else different about these particular cases, why are conviction rates so low for Hispanics who raise the Stand Your Ground defense? It appears as if the figures used to support racism are cherry-picked from the data.

Probability of Not Being Convicted			
Race of Person Killed		Race of Person Claiming to have acted in Self-defense	
Black	72.2%	Black	68.6%
White	58.7%	White	61.5%
Hispanic	80.0%	Hispanic	77.8%

There were also other important differences in the cases, differences not reflected in the simple averages. Using the Tribune data, blacks killed in these confrontations were 13 percentage points more likely to be armed than whites who were killed, thus making it more plausible that their killers reasonably believed that they had little choice but to kill their attacker. By a 43 to 16 percent margin, the blacks killed were also more often in the process of committing a crime. Further, there were slightly more cases with a witness around when a black person was killed (by a 69 to 62 percent margin).

Besides information on the victim's and defendant's race and gender, the Tampa Bay Tribune collected a lot of other useful information on the cases: whether the victim initiated the confrontation, whether the defendant was on his own property when the

shooting occurred, whether there was physical evidence, whether the defendant pursued the victim, and the type of case (a drug deal gone bad, home invasion, etc.). This detailed information about cases is valuable and has not been available in other studies.<sup>12</sup>

Surprisingly, the Tribune never examined whether this additional data they collected might explain the different conviction rates for whites and blacks. When examining the cases more closely, it appears that there is no evidence of discrimination. While the results are not statistically significant, the regressions suggest that any racial bias would go the other way, that killing a black rather than a white increases the defendant's odds of being convicted. That result holds whether looks at only those cases in which one person was killed or those in which one or more people were killed.

The regressions I have run on the Tribune data also indicate that, under the same circumstance, white defendants are more likely to be convicted than black defendants (see Appendix). Whether the person killed initiated the confrontation and whether there was an eyewitness were the most important factors in helping to predict whether there was a conviction.

In the third edition of my book *More Guns, Less Crime*, I provided the first published peer-reviewed study examining Stand Your Ground laws using national data. I found that they lowered murder rates by about 9 percent and that overall violent crime rates also declined.<sup>13,14</sup>

#### **Urban Institute report and other evidence**

In contrast to the Tampa Bay Tribune data, a recent Urban Institute study by John Roman claims to have found: “Stand Your Ground laws appear to exacerbate those [racial] differences, as cases over all are significantly more likely to be justified in SYG states than in non-SYG states.”<sup>15</sup> Roman acknowledges that his data lacks details available in the Tampa Bay Tribune data: “The data here cannot completely address this problem because the setting of the incident cannot be observed.”<sup>16</sup> Indeed, Roman’s estimates contain virtually none of the information available in the Tampa Bay Tribune data set. For example, his data has no information on whether an eyewitness saw the confrontation, or whether there existed physical evidence. And it has no information on who initiated the confrontation, where the attack occurred, or the type of case.<sup>17</sup>

Nevertheless, even using the limited information, Roman draws the wrong conclusion from his analysis. To the extent to which the Urban Institute study proves anything, it proves the *opposite* of what Roman claims.

Table 3 describes the likelihood a homicide is ruled justified when there is a single victim and single shooter, they are both male, they are strangers, and a firearm is used. In the six years of FBI data, this fact pattern occurred in 2,631 cases.

Table 3. Percentage of Homicides Ruled Justified, Martin Case Attributes, 2005-10

	Total	Non-Stand Your Ground states	Stand Your Ground states
White on white	16.28	12.95	23.58**
White on black	42.31	41.14***	44.71***
Black on white	8.57	7.69**	11.10
Black on black	10.14	10.24***	9.94***
Total	14.90	2.15***	3.67

Source: 2005-10 FBI Supplementary Homicide Reports.

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

Roman's evidence on how the racial composition of justifiable homicide cases differs between non-Stand Your Ground and Stand Your Ground states is shown in his Table 3 (reproduced here).<sup>18</sup> The share of justifiable homicides for white on black is indeed higher in Stand Your Ground states (41.14 in non-Stand Your Ground states and 44.71 in Stand Your Ground states), though the difference isn't statistically significant.<sup>19</sup> But the increase for black on white justifiable homicides is much larger in percentage terms (7.69 in non-Stand Your Ground states and 11.10 in Stand Your Ground states). Indeed, in non-Stand Your Ground states, white on black justifiable homicides are 5.3 times greater than black on white ones, but that ratio falls by twenty percent, to 4.0 times, in Stand Your Ground states.<sup>20</sup>

In addition, Roman's data not only supports the notion that Stand Your Ground laws help blacks, but his data is actually biased against this finding. Roman doesn't seem to recognize that there are biases in how the justifiable homicide data are collected. While typically about 35 states report this type of data,<sup>21</sup> a large percentage of the jurisdictions even within those states don't report such data. Police initially report the cases as criminal homicides. However, if a homicide is later determined to be "justifiable," they frequently never go back and recode the data. The problem is greatest for deaths where the greatest amount of time has elapsed between the death and it is determined to be justifiable. Some evidence suggests that recoding is less likely to occur in the larger urban areas, where a greater percentage of crimes involves blacks.<sup>22</sup> If so, the larger changes in shootings by whites found in Roman's study could simply result for jurisdictional differences.

A second unpublished study is one by Mark Hoekstra and Cheng Cheng at Texas A&M University. It has also received some attention for claiming that Stand Your Ground laws "lead to more homicides. Estimates indicate that the laws increase homicides by a statistically significant 8 percent . . ."<sup>23</sup> While Hoekstra and Cheng acknowledge that many states had adopted Stand Your Ground and Castle Doctrine laws prior to 2005, they do not explain why they exclude the passage of these laws from their analysis.<sup>24</sup> The issue is of particular concern given that previous work indicates that those excluded earlier states with Stand Your Ground laws showed drops in violent crime. Further,

Hoekstra and Cheng never explain why they only look at crime data from 2000 to 2010 when obviously all the data they use is available for decades prior to that period of time.

There are other questionable issues with the Hoekstra and Cheng study. For example, no other gun control laws were accounted for. It seems obvious that the impact of Stand Your Ground laws outside of people's homes will depend on how many people carry concealed handguns, yet Hoekstra and Cheng make no attempt to account for the number of concealed handgun permit holders in a state. As for the Castle Doctrine, the impact on the law depends on whether people can use guns defensively, which in turn hinges on guns being easily accessible rather than required to be locked away and unloaded. Yet, again, Hoekstra and Cheng make no attempt to account for changes in these storage laws. My research, which does account for these various factors, found that Stand Your Ground and Castle Doctrine laws reduce violent crime.<sup>25</sup>

### **Conclusion**

One great tragedy in the US today is that blacks are much more likely to be victims of violent crime. Police are important in protecting people, but as the police themselves understand, they can't be there all the time to protect victims. It is hardly surprising then that the evidence discussed here by both the Tampa Bay Tribune data and the Urban Institute study shows is that blacks are more likely than whites to have their homicides judged to be "justifiable." Blacks, who are most likely to be victims of violent crime, simply have to defend themselves more often. If there is any evidence that Stand Your Ground laws are applied with bias, it is that their application has been applied with bias against whites, not blacks. But it appears that all people benefit from these laws.

**Appendix on examples of cases where prosecutors deemed the defendant had not retreated sufficiently before using their gun defensively**

Here are some cases where people acting in self defense were prosecuted because prosecutors didn't think that they had retreated as far as possible before defending themselves.

-- Austin, Texas (1998) Man shot someone he had discover in his girlfriend's car. The shot was fired when the man lowered his hands and began to "turn around as though to attack."<sup>26</sup>

-- Black Oak, Arkansas (February 1999): A 75-year-old man was knocked down twice, being kicked repeatedly. The second time that he was knocked down, the 75-year-old man pulled out his revolver and fatally shot the other man once in the chest.<sup>27</sup>

-- East Baltimore, Maryland (June 2001): Two businessmen were acquitted of gunning down a drug addict who had broken into their warehouse.<sup>28</sup>

-- Palmer, AK (October 2003): A preacher was acquitted of two counts of manslaughter. Two men who were burglarizing the chapel at about 5 AM charged the preacher who shot them.<sup>29</sup>

-- West Palm Beach, Florida (October 2006): Norman Borden was walking his dogs at 2 AM when three men approached him. The men threatened to hurt Borden's dogs. At that point Borden showed them his gun and they left. However they returned armed with bats and "they headed straight to Borden, and he fired."<sup>30</sup>

-- Georgia (November 2006): John McNeil, a black man, shot Brian Epp, who was white. Epp had allegedly threatened McNeil's son and refused to leave McNeil's property. McNeil was convicted, but he was released early from his prison term. "State NAACP President Rev. William Barber called Tuesday's release 'a kind of partial repentance' by the Georgia criminal justice system."<sup>31</sup>

**Data Appendix: Running Regressions on the Tampa Bay Tribune Data**

The Tribune has collected a lot of information on everything from the race and gender of the person shot and the shooter to the following questions:

Did the victim initiate the confrontation?

Was the victim armed?

Was the victim committing a crime that led to the confrontation?

Did the defendant pursue the victim?

Could the defendant have retreated to avoid the conflict?

Was the defendant on his or her property?

Did someone witness the attack?  
Was there physical evidence?

Case type

Alleged Home Invasion  
Alleged sexual assault  
Argument over love interest  
Argument turned violent  
Attempted car theft  
Attempted home invasion  
Attempted robbery  
Burglary  
Citizen enforcing the law  
Dispute over money/property  
Domestic argument  
Domestic dispute  
Drug deal gone bad  
Fight at bar/party  
Home invasion  
Neighborhood dispute  
Retaliation  
Road Rage  
Robbery  
Roommate Dispute  
Teenage bullying  
Trespassing  
Unknown  
Unprovoked attack

Case year

The regression looking at the odds of someone being convicted of murder for those who have killed one or more people are shown here:

```
. xi: logit convicted VictimHispanic VictimWhite
VictimBlack VictimMale DefendantHispanic DefendantWhite
DefendantBlack DefendantMale DidVictimInitiateConfrontation
WastheVictimArmed WasVictimCommittingCrime
DidDefendantPursueVictim CouldDefendantRetreat
WasDefendantonHisProperty DidSomeoneWitnessAttack
WasTherePhysicalEvidence othermurdered casetype_2-
casetype_25 year_2006-year_2012 if pending=="Decided", or
robust
```

Logistic regression

Number of obs = 78

Wald chi2(32) =  
 Prob > chi2=  
 Log pseudolikelihood = -22.785937 Pseudo R2 = 0.5735

	Odds Ratio	Robust Std. Err.	z	P> z
convicted				
VictimHisp~c	.0000949	.0003103	-2.83	0.005
VictimWhite	.238639	.4879525	-0.70	0.483
VictimBlack	3.390464	9.382387	0.44	0.659
DefendantH~c	5.55e-13	1.35e-12	-11.61	0.000
DefendantW~e	7.55e-11	2.26e-10	-7.78	0.000
DefendantB~k	1.91e-12	.	.	.
DefendantM~e	.2819811	.5277879	-0.68	0.499
DidVictimI~n	.0078562	.0144318	-2.64	0.008
WasTheVict~d	.0895871	.2060086	-1.05	0.294
WasVictimC~e	2.951656	9.628308	0.33	0.740
DidDefenda~m	1.935009	3.692359	0.35	0.729
CouldDefen~t	1.207219	1.75638	0.13	0.897
WasDefenda~y	3.68262	2.776331	1.73	0.084
DidSomeone~k	34.60143	52.71921	2.33	0.020
WasTherePh~e	.236634	.2656798	-1.28	0.199
othermurde~d	54.95588	119.1862	1.85	0.065
casetype_3	240.5917	643.6653	2.05	0.040
casetype_4	71.61738	152.6067	2.00	0.045
casetype_8	4369.197	16026.35	2.29	0.022
casetype_9	1132.737	3854.253	2.07	0.039
casetype_10	183.0676	402.9866	2.37	0.018
casetype_12	468.6694	1215.575	2.37	0.018
casetype_13	553160.6	2506482	2.92	0.004
casetype_14	1170.289	3029.217	2.73	0.006
casetype_15	84.6564	416.3267	0.90	0.367
casetype_17	24.15446	60.33759	1.27	0.202
casetype_25	37.81938	87.88588	1.56	0.118
year_2006	.1661872	.3844092	-0.78	0.438
year_2007	.0113472	.0417041	-1.22	0.223
year_2008	.0095219	.0326906	-1.36	0.175
year_2009	.3936484	.9631961	-0.38	0.703
year_2010	44.73127	123.881	1.37	0.170
year_2011	.0005799	.001551	-2.79	0.005

Note: 0 failures and 1 success completely determined.

The regression looking at the odds of someone being convicted of murder for those who have killed one person is shown here:

```
xi: logit convicted VictimHispanic VictimWhite VictimBlack
VictimMale DefendantHispanic DefendantWhite DefendantBlack
DefendantMale DidVictimInitiateConfrontation
WasTheVictimArmed WasVictimCommittingCrime
DidDefendantPursueVictim CouldDefendantRetreat
WasDefendantonHisProperty DidSomeoneWitnessAttack
WasTherePhysicalEvidence othermurdered casetype_2-
casetype_25 year_2006-year_2012 if pending=="Decided" &
MurderVictim2sRace=="NA", or robust
```

```
Logistic regression                Number of obs =    66
                                Wald chi2(29) =      .
                                Prob > chi2=          .
Log pseudolikelihood = -20.7842   Pseudo R2          =0.5408
```

		Robust			
convicted	Odds Ratio	Std. Err.	z	P> z	
VictimHisp~c	.0009022	.002332	-2.71	0.007	
VictimWhite	.4247123	.9166847	-0.40	0.692	
VictimBlack	1.174415	4.496167	0.04	0.967	
DefendantW~e	34.6601	89.92937	1.37	0.172	
DefendantB~k	4.915077	12.41981	0.63	0.529	
DefendantM~e	.340511	.5529446	-0.66	0.507	
DidVictimI~n	.0137108	.0348234	-1.69	0.091	
WasTheVict~d	.0721759	.2389135	-0.79	0.427	
WasVictimC~e	3.043378	12.33578	0.27	0.784	
DidDefenda~m	1.635232	3.278233	0.25	0.806	
CouldDefen~t	1.475613	2.438766	0.24	0.814	
WasDefenda~y	4.778653	5.087016	1.47	0.142	
DidSomeone~k	22.62614	40.55751	1.74	0.082	
WasTherePh~e	.2503723	.2216539	-1.56	0.118	
casetype_3	7.49e+08	1.75e+09	8.77	0.000	
casetype_4	8.24e+08	2.21e+09	7.63	0.000	
casetype_8	1.74e+10	3.81e+10	10.76	0.000	
casetype_9	2.10e+09	5.48e+09	8.22	0.000	
casetype_10	1.60e+09	2.58e+09	13.13	0.000	
casetype_12	1.84e+09	5.58e+09	7.04	0.000	
casetype_13	1.08e+12	3.20e+12	9.37	0.000	

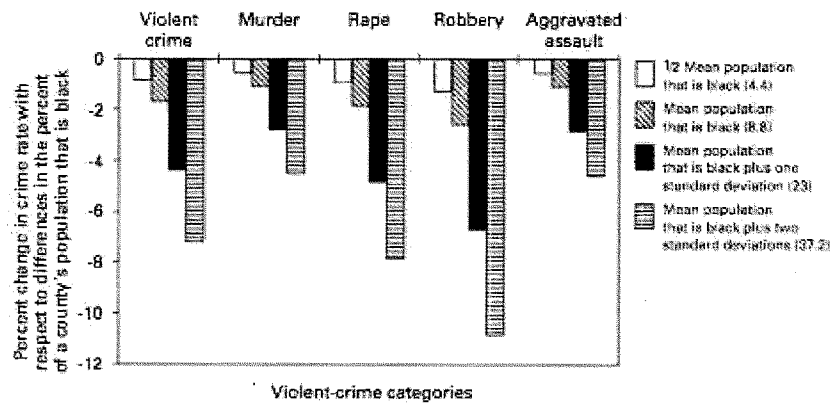


casetype_14		1.46e+09	4.26e+09	7.24	0.000
casetype_15		4.84e+08	1.89e+09	5.12	0.000
casetype_17		1.11e+08	3.26e+08	6.34	0.000
casetype_25		2.62e+08	.	.	.
year_2006		.6355305	1.720501	-0.17	0.867
year_2007		.0931599	.4768633	-0.46	0.643
year_2008		.0573326	.2092783	-0.78	0.434
year_2009		1.008875	2.457142	0.00	0.997
year_2010		63.62403	200.2368	1.32	0.187

Note: 1 failure and 0 successes completely determined

#### Appendix: Reduction in Crime Rates from Right-to-carry laws based upon the percentage of the population that is black

Results shown on page 183 of the third edition of *More Guns, Less Crime* (University of Chicago Press, 2010).



## Endnotes

<sup>1</sup> John R. Lott, Jr., *More Guns, Less Crime* (University of Chicago Press, 2010, 3<sup>rd</sup> edition).

<sup>2</sup> There were 38 Democrats in the state House at that vote and the Democrats were almost equally divided on the issue. The legislative history for “HB 249 CS - Protection of Persons and Property” is available here

(<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=15498>).

<sup>3</sup> “Stand Whose Ground: President Obama vs. Senator Obama,” *Wall Street Journal*, July 23, 2013

(<http://online.wsj.com/article/SB10001424127887324783204578622102597966828.html>).

<sup>4</sup> John Fund, “Obama Voted to Strengthen Illinois’s Stand Your Ground Law in 2004,” *National Review Online*, July 22, 2013

(<http://www.nationalreview.com/corner/354059/obama-voted-strengthen-illinois-stand-your-ground-law-2004-john-fund>).

<sup>5</sup> Attorney General Eric Holder claimed that repealing “Stand Your Ground” laws would help blacks. Patrick Howley, “Blacks benefit from Florida ‘Stand Your Ground’ law at disproportionate rate,” *The Daily Caller*, July 16, 2103

(<http://dailycaller.com/2013/07/16/blacks-benefit-from-florida-stand-your-ground-law-at-disproportionate-rate/>).

President Obama has made many comments on the subject. In one comment, President Obama noted: “‘If I had a son, he’d look like Trayvon.” Jeff Mason and Daniel Trotta, “Obama gets personal over killing of black Florida teenager,” *Reuters*, March 23, 2012 (<http://www.reuters.com/article/2012/03/23/us-florida-shooting-obama-idUSBRE82M0QF20120323>).

<sup>6</sup> Alyssa Giannirakis, “Tavis Smiley: You Can ‘Stand Your Ground Unless You Are A Black Man’,” *ABC News*, July 14, 2013

(<http://abcnews.go.com/blogs/politics/2013/07/tavis-smiley-you-can-stand-your-ground-unless-you-are-a-black-man/>).

<sup>7</sup> The 2011 Florida Statutes, Title XLVI, CRIMES, Chapter 776 Justifiable Use of Force, 776.012: Use of force in defense of person (<http://www.husseinandwebber.com/florida-stand-your-ground-statute.html>). The provisions are the same for other states, such as Pennsylvania

(<http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.005.005.000..HTM>).

<sup>8</sup> These are cases from the beginning of 2006 to July 24<sup>th</sup>, 2013. “Florida’s Stand Your Ground Law,” *Tampa Bay Times*, August 10, 2013 (<http://www.tampabay.com/stand-your-ground-law/fatal-cases>). A breakdown of fatal cases where they classify the accused is black and the victim is white finds four cases where the charges were dropped or the black was found “not guilty.”

<sup>9</sup> Randy Wimbley, “Detroit man says ‘stand your ground’ kept him out of prison,” *Fox 2 News*, August 2, 2013 (<http://www.myfoxdetroit.com/story/23035397/detroit-man-says-stand-your-ground-kept-him-out-of-prison>).

<sup>10</sup> Leslie Coursey, “Man says ‘stand your ground’ law saved his life,” *WTEV Channel 47* in Jacksonville, July 26, 2013

(<http://www.actionnewsjax.com/content/topstories/story/Man-says-stand-your-ground-law-saved-his-life/SQNPxo275UqMpFf-7g8iOQ.csp>).

<sup>11</sup> Using earlier data, the Tampa Bay Tribune had reported the percent of those who killed a black person and faced no penalty as 71 percent.

<sup>12</sup> John Roman, "Race, Justifiable Homicide, and Stand Your Ground Laws," The Urban Institute, July 2013 (<http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>). Roman concluded that when white defenders kill black attackers, "the justifiable homicide rate is 34 percent," compared to a 3% rate when the defender is black and the attacker white. Roman concludes that this proves racism, but there is one big problem with this discussion: it assumes that the underlying true rate of justifiable homicides for the two groups of cases is the same. If the underlying rates are different, there could be no discrimination or even the opposite discrimination of what is claimed.

This paper also doesn't understand how the FBI's justifiable homicide data is measured. While often about 35 states report this data, a large percentage of the jurisdictions in even those states don't report the data. What states and what jurisdictions within those states report this data changes dramatically over time. The implication is any changes over time might simply arise from changes in the states or portions of states that are reporting this data. The biggest problem involves how this data is collected. Police initially report the cases as criminal homicides. If it's later determined to be justifiable, they don't frequently don't go back and recode the data. The problem is greatest for those deaths where the greatest amount of time elapses between the death and it is determined to be justifiable. There is also some evidence that recoding is less likely to occur in the larger urban areas where you are likely to have a greater percentage of crime involving blacks. If so, the larger changes in shootings by whites found in Roman's study would simply result for jurisdictional differences. John Barnes, "Justified to kill: Why there are more self-defense killings in Michigan than anyone knows," MLive, June 12, 2012 ([http://www.mlive.com/news/index.ssf/2012/06/justified\\_to\\_kill\\_why\\_there\\_ar.html](http://www.mlive.com/news/index.ssf/2012/06/justified_to_kill_why_there_ar.html)).

<sup>13</sup> John R. Lott, Jr., *More Guns, Less Crime* (University of Chicago Press, 2010, 3<sup>rd</sup> edition).

<sup>14</sup> Other research by Cheng and Hoekstra (December 2012) claims to find increases in murder rates with the adoption of Castle Doctrine and Stand Your Ground type laws, but there are several unexplained issues with the paper: no explanation is offered for why only laws instituted after September 2005 are studied and there is no attempt to account for other types of gun control laws such as Right-to-carry laws. This last one is particularly important because the extent to which the Stand Your Ground law should have an effect should vary with the percent of the population with concealed handgun permits. Cheng Cheng and Mark Hoekstra, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine," Texas A&M University Working Paper (December 17, 2012).

<sup>15</sup> John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE, (July 2013): p. 9.

<sup>16</sup> John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE, (July 2013): p. 11.

<sup>17</sup> Roman notes: "Several facts about the Martin homicide are known. Zimmerman and Martin were strangers, they were the only two people involved in the incident, neither was law enforcement, a handgun was used in the homicide, Zimmerman was white, Martin was black, and Zimmerman was older than Martin." But this is only a small of the information available in the Tampa Bay Tribune data set that is listed out in the appendix. John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE, (July 2013): p. 9.

<sup>18</sup> Note that Roman's analysis is hardly typical. The preferred way academics analyze such data is a panel analysis where the change in a state's justified homicide rate would be looked at before and after a state adopts a Stand Your Ground law. Looking at changes in each state before and after a law changes is crucial for trying to take into account differences across states. But his analysis, with no explanation, departs from the traditional analysis: arbitrarily lumping states into 10 different groups makes it impossible to see if there is a change in a state's justifiable homicide rate after that particular state changes its law.

<sup>19</sup> Roman provides information on whether these estimates are statistically significantly different from zero, but not on whether they are statistically different from each other.

<sup>20</sup> The estimates in Roman's Table 4 could have dealt with this question by interacting the coefficients for black on black, white on black, and black on white with the Stand Your Ground dummy variable to see how those race coefficient variables change with whether the Stand Your Ground law is in effect.

<sup>21</sup> "More Killings Called Self-defense," Wall Street Journal, April 2, 2012 (<http://online.wsj.com/news/interactive/STAND0330?ref=SB10001424052702303404704577311873214574462>).

<sup>22</sup> John Barnes, "Justified to kill: Why there are more self-defense killings in Michigan than anyone knows," MLive, June 12, 2012 ([http://www.mlive.com/news/index.ssf/2012/06/justified\\_to\\_kill\\_why\\_there\\_ar.html](http://www.mlive.com/news/index.ssf/2012/06/justified_to_kill_why_there_ar.html)).

<sup>23</sup> Mark Hoekstra & Cheng Cheng, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from the Castle Doctrine*. Texas A&M University working paper, (December 17, 2012): p. 4, available at <http://ssrn.com/abstract=2079878>.

<sup>24</sup> See John R. Lott, Jr., *More Guns, Less Crime* (University of Chicago Press, 2010, 3<sup>rd</sup> edition): p. 332 for a list. For example, even during the period from 2000 to 2004, state law changes are ignored. Utah's 2003 change is not included. And major changes in Illinois' law in 2004 are also not included.

<sup>25</sup> John R. Lott, Jr., *More Guns, Less Crime* (University of Chicago Press, 2010, 3<sup>rd</sup> edition): Chapter 10 and particularly pp. 330-333.

<sup>26</sup> Leah Quinn, "Saustrop acquitted in 1998 killing; Jurors reach their verdict three hours after telling judge they were deadlocked," The Austin-American Statesman, May 27, 2000.

<sup>27</sup> Associated Press, "Jury Sent Home, to Return and Continue Deliberations," Associated Press Newswire, Sept. 28, 1999. Associated Press, "Man Killed After Argument," Associated Press Newswire, Feb. 26, 1999. Associated Press, "Wallace Found Guilty of Negligent Homicide," Associated Press Newswire, Sept. 29, 1999.

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<sup>28</sup> Allison Klein, "Judge acquits two men who shot intruder," Baltimore Sun, January 24, 2003.

<sup>29</sup> Phillip D. Mielke, "Pastor acquitted in fatal shooting of intruders at his church," Associated Press (AK), October 27, 2003.

<sup>30</sup> Nancy L. Othon, "Free but in fear of reprisal man acquitted of murder, but living under threat," South Florida Sun Sentinel, July 1, 2007.

<sup>31</sup> "Wilson man released from Georgia prison after six years," WRAL, February 13, 2013 (<http://www.wral.com/wilson-native-who-maintained-innocence-to-go-free-tuesday/12096265/>)

## PREPARED STATEMENT OF LUCIA HOLMAN MCBATH, ATLANTA, GEORGIA

**Testimony of Lucia McBath**  
**Hearing before the Senate Judiciary Committee, Subcommittee on the Constitution, Civil**  
**Rights and Human Rights**  
**on**  
**“Stand Your Ground’ Laws: Civil Rights and Public Safety implications of the Expanded Use of**  
**Deadly Force”**  
**October 29, 2013**

My name is Lucia Holman McBath and I thank you for the opportunity to speak before this great institution today. I was raised in a family steeped in justice and confident in the triumphant goodness of humanity. My mother was a registered nurse and my father, who served in the U.S. Army Dental Corp., was also for over twenty years president of the NAACP for the State of Illinois. He worked actively with President Lyndon Baines Johnson in the signing of the Civil Rights Act of 1964. If he could see me today, testifying in front of the United States Senate, he would be beaming with pride and amazed at how far his daughter had come. Until he came to understand what brought me here.

I appear before you because my son Jordan was shot and killed last November while sitting in the back seat of a friend's car listening to loud music. The man who killed him opened fire on four unarmed teenagers even as they tried to move out of harm's way. That man was empowered by the Stand Your Ground statute. I am here to tell you there was no ground to stand. There was no threat. No one was trying to invade his home, his vehicle, nor threatened him or his family. There was a vociferous argument about music, during which the accused, Michael Dunn, did not feel he was treated with respect. "You're not going to talk to me like that," he shouted as he sprayed the car that Jordan sat in with bullets, killing him instantly. When Jordan's friends tried to back the car away, Mr. Dunn aimed his handgun and fired off several more rounds; nine, total, pierced the car. There are any number of ways this interaction might have gone, but there was only one way it could have ended once a gun entered the equation.

In Florida, over one million people carry concealed weapons. Additionally, ten to fifteen thousand more Floridians are approved to carry guns in public every month- faster than any State in the nation. Nationally, Florida has some of the loosest permitting requirements. Automobile glove boxes are becoming modern day "gun boxes." In his glove box, Michael Dunn kept a 9mm semi-automatic along with two loaded magazines. Once he had unloaded his gun at my son and his teen-aged friends, he immediately went back to his hotel, ordered a pizza and slept. He left the scene and made no attempt to call police. He retreated, but only after he killed my son. The next morning he was arrested two hours away. Those are hardly the actions and motives of someone who was quaking with fear.

Some will tell you that the argument was about music, but I believe that it was about the availability of guns and the eagerness to hate. People like Mr. Dunn feel empowered to use their gun instead of their voice to reason with others. Now I face the very real possibility that my son's killer will walk free, hiding behind a statute that lets people claim a threat where there was none. This law declares open season on anyone that we don't trust for reasons that don't even have to be true. In essence, it allows any armed citizen to "self-deputize" themselves and establish their own definition of law and order. It lets one and all define their own criteria for right and wrong and how justice will be carried out. Even the Wild West had more stringent laws governing the taking of life than we have now. "Stand Your Ground" defies all reason. It goes against the sound system of justice established long ago on this very Hill.

My son was named for the river Jordan. In the Bible, that river symbolized the crossing to freedom. Its waters marked the final steps to liberation and offered up the holy stream that baptized Jesus. Its name seemed a fitting choice for a boy born at the end of the twentieth century- a time when black people in this country had finally come into their own.

Jordan was named for a change in the tide, a decision to try harder and do better. He was my only child. He was raised with love and learning and a clear understanding of right and wrong. I have been without Jordan now since Thanksgiving weekend 2012, without him last Christmas and on his birthday in February. I never got to take his prom picture or see him graduate from high school. I can tell you all about him- about his easy smile, his first girlfriend, and his plans to join the Marines. I can tell you how he loved his dad's gumbo. And, how they both rooted for the NY Giants. But you can never really know my boy. Because an angry man owned a gun, kept it close at hand, and chose to demonstrate unbridled hatred one balmy evening for reasons I will never understand. These laws empowered his prejudiced beliefs and subsequent rage over my son's own life, his liberty and pursuit of happiness. There will be no sense made of any of it, unless I and the families of other victims speak out to assure this kind of predatory violence ends.

It was fifty years ago that my father shook hands with Eleanor Roosevelt. She assured him of the validity of his struggle and the promise of better times. She, as he did, believed that this nation was righteous to the core. That we as a country would never stop striving to do better. And that was what made us better. Honorable men and women of the Senate, you can prove them right today. With your help and willingness to bring our laws back toward the true tenets of justice, you can lift this nation from its internal battle in which guns rule over right. You have the power to restore hope to a nation crying out for justice. Thank you.

## QUESTIONS

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN FOR DAVID LABAHN

**Questions for the Record from Senator Dianne Feinstein**

**For David LaBahn, President and CEO of the Association of Prosecuting Attorneys**

**Senate Committee on the Judiciary**

**October 29, 2013**

I am particularly concerned about the interplay between “Stand Your Ground” laws and permissive state concealed carry laws. Some states give concealed carry permits to individuals who, for example, have been convicted of a violent misdemeanor, such as a domestic violence crime against a dating partner. Other states impose minimal or no firearms training requirements to qualify for a concealed carry permit.

If an individual who is prone to violence and untrained in firearms is allowed to carry a concealed firearm and, in an altercation, to use that firearm without having to retreat or use lesser force, I believe we will see an increase in violence.

- Do you agree that Stand Your Ground laws are particularly troubling when enacted by states that have permissive concealed carry laws?
- Legislation has been introduced in Congress to force states to accept the concealed carry permits issued by other states, even if those other states’ standards for issuance are significantly weaker. If this legislation were enacted, a person with a concealed carry permit from the most permissive state could carry a firearm into any other state, including into states that have enacted a Stand Your Ground law. I believe this will lead to an increase in violent confrontations. Do you agree?



## ANSWERS

## RESPONSES OF DAVID LABAHN TO QUESTIONS SUBMITTED BY SENATOR FEINSTEIN

**Responses to the Questions for the Record from Senator Dianne Feinstein****Submitted by David LaBahn, President and CEO of the Association of  
Prosecuting Attorneys****Senate Committee on the Judiciary****November 6, 2013**

Senator Feinstein expressed concern about the interplay between “Stand Your Ground” laws and permissive state concealed carry laws. Some states give concealed carry permits to individuals who, for example, have been convicted of a violent misdemeanor, such as a domestic violence crime against a dating partner. Other states impose minimal or no firearms training requirements to qualify for a concealed carry permit.

If an individual who is prone to violence and untrained in firearms is allowed to carry a concealed firearm and, in an altercation, to use that firearm without having to retreat or use lesser force, I believe we will see an increase in violence.

- Senator Feinstein: Do you agree that Stand Your Ground laws are particularly troubling when enacted by states that have permissive concealed carry laws?

David LaBahn: I agree with your premise that the dangers to public safety are magnified with the combination of permissive concealed carry laws and the presumption and immunity provisions of “Stand Your Ground Laws.” Studies have shown that states where there is strong enforcement of the restraining orders including the preclusion from owning or possession a firearm have lower rates of homicide.

In addition, your identification of individuals convicted of violent misdemeanors, many times related to dating violence or untrained permit holders, increases the likelihood of an escalation of violence. This may include the inappropriate use of the firearm and the taking of a life. But for the possession of the firearm, no killing would have occurred whether or not it was later determined to be legally justified.

- Senator Feinstein: Legislation has been introduced in Congress to force states to accept the concealed carry permits issued by other states, even if those other states' standards for issuance are significantly weaker. If this legislation were enacted, a person with a concealed carry permit from the most permissive state could carry a firearm into any other state, including into states that have enacted a Stand Your Ground law. I believe this will lead to an increase in violent confrontations. Do you agree?

David LaBahn: Yes, I agree. As I stated above, the increase in the number of individuals who have convictions for assault crimes coupled with a lack of training and the immunity provisions of "Stand Your Ground" will lead to an increase in violent confrontations. As prosecutors we are concerned that allowing reciprocity between all states, not between states that agree to the reciprocity as is the current state of concealed carry law, will lead to a situation that these laws will revert to the lowest common denominator. Meaning, whichever state has the "easiest" carry law will be the domicile of choice for those who live in close proximity and may have even been denied by their current state of residence. For example, someone living and working here in DC could move to Maryland, Virginia or even West Virginia and be legally permitted to carry a concealed weapon in the District. This individual may now feel emboldened to use the weapon in a deadly confrontation that today is a routine police matter to respond and resolve an argument.

# MISCELLANEOUS SUBMISSIONS FOR THE RECORD

RASHAD ROBINSON, EXECUTIVE DIRECTOR, COLOROFCHANGE.ORG, OAKLAND,  
CALIFORNIA, STATEMENT

September 16, 2013

United States Senate  
Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights and Human Rights  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Cruz, and esteemed members of the committee:

First and foremost, I would like to send love and appreciation from the ColorOfChange community to the family of Trayvon Martin. They have shown exemplary strength and courage during such a difficult time. They are owed a debt of gratitude for the way in which they have stood up and spoken out on behalf of so many victims while mourning the tragic loss of their son.

## About ColorOfChange and our engagement in issues related to "Stand Your Ground" laws

My name is Rashad Robinson, and I am the Executive Director of ColorOfChange.org. With over 900,000 members nationally, ColorOfChange is the largest online civil rights organization in the country. We are Black Americans and our allies of every race, working to make government and corporations more accountable to the concerns of our community. So-called "Stand Your Ground" or "Shoot First" laws do not benefit society and seek to fix a problem that does not exist.<sup>1</sup> There are protections that already exist within the law that provide citizens the right to self-defense if safe retreat is not an option.

On July 13, 2013, the state of Florida found George Zimmerman not guilty of second-degree murder for shooting and killing unarmed 17-year-old Trayvon Martin. This was a tragedy for Black families everywhere, and a highly-visible example of how law enforcement and our criminal justice system routinely fail Black people and our communities. Were it not for Trayvon's family and countless supporters taking action across the nation, Zimmerman could have gotten away without the slightest of repercussions for his actions. George Zimmerman walked free after murdering Trayvon Martin for 45 days<sup>2</sup> before he was finally arrested. Thousands of ColorOfChange members have taken a stand and become deeply involved in the case since then. Over 170,000 of our organization's members demanded that the Sanford Police Department arrest Zimmerman and that he face trial. Our members are part of a nationwide movement of people who are still demanding justice for Trayvon Martin, as the

<sup>1</sup> "Time to Repeal ALEC/NRA Stand Your Ground Laws," Center for Media and Democracy, 07-15-13

<sup>2</sup> "45 Days After Killing Trayvon Martin & Sparking National Outcry, George Zimmerman Finally Charged," Democracy Now!, 04-12-12

colorofchange.org

1714 Franklin Street, Suite 100-136  
Oakland, CA 94612

Zimmerman not-guilty verdict sent a clear message about the minimal value placed on the lives of young Black men and boys everywhere.

#### **The American Legislative Exchange Council (ALEC) and National Rifle Association (NRA)**

When ColorOfChange first started looking into the shooting death of Trayvon Martin, we were taken aback by the role that Florida's Shoot First law played in the Sanford Police Department's botching of its homicide investigation,<sup>3</sup> which would later become a significant issue at trial.<sup>4</sup> Police claimed the law prohibited them from making an arrest or charging George Zimmerman with any crime,<sup>5</sup> despite Zimmerman's confession on the scene that he had followed, confronted and killed Martin;<sup>6</sup> it was the failure to make an arrest in this unarmed young man's violent death for more than six weeks that drove the popular anger and protests we saw spring up in cities across the country.

Shoot First's legal presumption that subjective, racist fears are justifiable grounds for vigilante homicide has served to paint a target on the backs of Black youth since Florida's adoption of the NRA-written legislation in 2005<sup>7</sup> — and even more so in the wake of July's verdict, which saw George Zimmerman acquitted of all criminal charges.<sup>8</sup> Yet despite the outcome of the Zimmerman case and eight years of data on Shoot First's racially-biased outcomes, the organization responsible for pushing this legislation out to more than two dozen states across the country<sup>9</sup> — the American Legislative Exchange Council, or ALEC — has taken no steps to repeal these deadly laws in the states where they are on the books. It has also made no effort to dissuade ALEC legislators from continuing to introduce new ones: at least ten Shoot First bills have been introduced so far in 2013, and two have passed.<sup>10</sup> Although membership in ALEC is a tightly-guarded secret, many of these bills were (re-)introduced by known ALEC legislators.<sup>11</sup>

ColorOfChange began looking at ALEC and urging its corporate members — 98 percent of ALEC's funding comes from corporations, corporate foundations or industry groups<sup>12</sup> — to stop

<sup>3</sup> "Orlando Watch Shooting Probe Reveals Questionable Police Conduct," ABC News, 03-13-12; "Teen's death suggests review of 'Stand Your Ground Law' needed," Tallahassee Democrat, 03-16-12

<sup>4</sup> "Zimmerman trial medical examiner: Prosecutors, police threw the case," The Grio, 09-16-13

<sup>5</sup> "Police: No Grounds For Arrest In Trayvon Martin Death," WESH-TV, 03-16-12

<sup>6</sup> "Witnesses in Trayvon Martin death heard cries before shot," Miami Herald, 03-15-12

<sup>7</sup> "Florida's Stand Your Ground Law: Uneven application, shocking outcomes," Tampa Bay Times, 06-03-12

<sup>8</sup> "Open season on black boys after a verdict like this," Guardian, 07-14-13

<sup>9</sup> "'Shoot First' Laws," Second Chance on Shoot First, accessed 09-16-13

<sup>10</sup> "ALEC at 40: Turning Back the Clock on Prosperity and Progress," Center for Media and Democracy, 08-08-13

<sup>11</sup> "Legislators with ALEC Ties," ALECExposed.org/Center for Media and Democracy, accessed 09-16-13

<sup>12</sup> "A CMD Special Report on ALEC's Funding and Spending," Center for Media and Democracy, 07-13-11

funding the group in the fall of 2011, after realizing that ALEC was the driving force behind coordinated, state-by-state attacks on the voting rights of Black people, Latinos, the elderly, students, people with disabilities, and the poor.<sup>13</sup>

After Trayvon Martin's death, ColorOfChange began to look at how we could address the conditions that allowed George Zimmerman to evade criminal charges for so long, and found that the same group — ALEC — was directly responsible for replicating Florida's deadly Shoot First law in 25 other states across the country.<sup>14</sup> As a long-time ALEC funder — and co-chair of its (now defunct) Public Safety & Elections Task Force with Wal-Mart, the biggest gun retailer in the United States — the NRA has directly authored dozens of "model" gun access laws that fly in the face of commonsense efforts to reduce gun violence.<sup>15</sup>

ALEC acts as a corporate bill laundry<sup>16</sup> or bill mill, developing, promoting and disseminating corporate-sponsored "model" legislation to statehouses across the country<sup>17</sup> — and at the federal level through its extensive alumni network of former state legislators now serving in higher office. ALEC's structure gives corporations equal voting power with elected legislators<sup>18</sup> in deciding which legislation — largely written by those very same corporate members — gets fast-tracked to statehouses across the country. This process is about obscuring the fact that ALEC is a lobbying organization, is designed to maximize profit for its corporate members, and has zero to do with appealing to or safeguarding the public interest.<sup>19</sup> As Wisconsin Rep. Chris Taylor reported being told at ALEC's latest annual meeting, "You really don't need people to do this. You just need control over the legislature and you need money, and we have both."<sup>20</sup>

After ColorOfChange and our partner organizations lifted up ALEC's central role in pushing Shoot First across the country, ALEC took steps to distance itself from its own track record on the issue, disbanding its Public Safety & Elections Task Force and disclaiming any continuing relationship with the NRA. (ALEC has failed to explain why the NRA was a highly-visible fixture of ALEC's July 2013 meeting in Salt Lake City, as well as its 40th anniversary gathering this August in Chicago.) This move was quickly revealed as a PR stunt after the Task Force chair, State Rep. Jerry Madden of Texas, said that "many of the issues will be transferred to other

<sup>13</sup> "GOP, ALEC Could Make It Harder For 5 Million To Cast Ballots," Mother Jones, 10-03-11

<sup>14</sup> "How ALEC Took Florida's 'License to Kill' Law National," The Nation, 03-21-12

<sup>15</sup> "Big Money, ALEC and the Gun Agenda," Truthout, 12-16-12

<sup>16</sup> "Pssst...wanna buy a law?" Bloomberg Businessweek, 12-01-11

<sup>17</sup> "Running Scared: ALEC Anticipating an IRS Audit?" Center for Media and Democracy, 12-14-12

<sup>18</sup> "6 Degrees of Walmart," Public Advocate for the City of New York, accessed 09-16-13

<sup>19</sup> "Conservative Nonprofit Acts as a Stealth Business Lobbyist," New York Times, 04-21-12

<sup>20</sup> "Inside the 'ALEC Universe,'" Moyers & Co., 08-15-13

committees." When asked to clarify his statement during a subsequent interview, Rep. Madden refused to commit to taking Shoot First laws off the table.<sup>21</sup>

Corporations have taken steps to distance themselves from ALEC as well; more than 50 companies and other "private sector members" have dropped their ALEC memberships and publicly disassociated themselves from the group since ColorOfChange began our work to expose ALEC in 2011.<sup>22</sup>

#### **The danger of Shoot First laws**

Shoot First laws combine with race-based fear and existing racial bias in the criminal justice system to make targets of our youth, creating conditions by which they can be killed with impunity. These laws incentivize shoddy police work, leading to incomplete investigations and a failure to prosecute homicides. States that have adopted Shoot First have seen a significant increase in homicides — as much as 7-9 percent, or between 500-700 homicides annually.<sup>23</sup>

When I traveled to the state of Florida to meet the Dream Defenders, I saw just how committed this group of young people were to repealing Shoot First laws. During the time I spent in the capitol with them, I learned just how personal these issues are for our youth. These courageous young leaders know that these laws are a matter of life and death.

Shoot First laws present a grave threat to overall public safety, and particularly to young Black males, who are nearly five times more likely to be victims of fatal shootings.<sup>24</sup> Additionally, white people who kill Black people are 354% more likely to be cleared of wrongdoing than whites who kill other whites.<sup>25</sup> With the criminal justice system already stacked against Black victims and defendants, and with the prevalence of racial profiling in a culture that treats people of color as criminals, our families and communities will continue to pay a heavy price for these laws wherever they are on the books.

These conditions become even more dangerous when combined with weak state gun laws. Florida's concealed carry law enabled George Zimmerman, who had a criminal record and

<sup>21</sup> "ALEC leader admits last week's announcement was a PR stunt," ColorOfChange blog, 04-24-12; "Disbanded ALEC Task Force Chair: Gun and Voter Issues No Longer Priority," Media Matters, 04-26-12

<sup>22</sup> "Corporations that Have Cut Ties to ALEC," ALECExposed.org/Center for Media and Democracy, accessed 09-16-13

<sup>23</sup> "License to Kill How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results," Center for American Progress, September 2013 (embargoed until 09-17-12).

<sup>24</sup> "1 in 3 Black Men Go To Prison? The 10 Most Disturbing Facts About Racial Inequality in the U.S. Criminal Justice System," Alternet, 03-17-12

<sup>25</sup> "White people who kill black people in 'Stand Your Ground' states are 354% more likely to be cleared of murder," Daily Mail, 07-15-13

history of violence,<sup>26</sup> to legally carry a hidden, loaded handgun in public. If Zimmerman had lived in one of 25 states other than Florida, his prior arrest for assaulting a police officer and history of domestic violence could have resulted in the denial of his application for a carry permit.<sup>27</sup>

#### **Voices of our members**

Every day, we hear from our members about issues related to gun violence. We hear from mothers telling us the fears they have for the safety of their sons and daughters. We hear from young people who will always remember where they were when the Zimmerman verdict came down and they were sent another reminder about the value this nation places on their lives. We hear from fathers looking to have "the talk" with their sons — the talk that Black fathers dread having with their sons, wondering when it is ever the right time to tell their boys about how to stay safe in a world that has little respect for young Black men. Our members, of all races and classes, outraged by the verdict in Sanford, continue to be committed to repealing these laws written by corporations and their lobbyists, laws that enable powerful interests to profit from violence and suffering in our communities.

#### **Conclusion**

We are hopeful for the work of this committee and we appreciate the opportunity to submit testimony. We'll continue to work with Congress, the Obama Administration, and in states across the country to repeal Shoot First laws and hold accountable those who will fight to keep them in place. Thank you for your attention to this critical matter.

Sincerely,



Rashad Robinson

<sup>26</sup> "George Zimmerman's Criminal History Includes Alleged Violence and Temper," Center for Media and Democracy, 09-10-13

<sup>27</sup> See reference 23.

## COMMON CAUSE, WASHINGTON, DC, STATEMENT



October 29, 2013

## Common Cause Statement

Hearing at the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights  
 “‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force”

Common Cause commends Senator Durbin and the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding a hearing today to examine the many implications of American Legislative Exchange Council (ALEC)-backed “Stand Your Ground” laws. In addition to documenting the laws’ impact on civil rights and public safety, it is important for the public to fully understand the process by which such legislation was introduced, debated, and ultimately enacted in various jurisdictions around the country. While ALEC recently disbanded the task force that promoted “Stand Your Ground” bills, more sunlight needs to be shed on how it is that the nation’s largest gun lobby can team up with a tax-exempt group to pass such controversial legislation in more than two dozen states without any meaningful oversight or legal consequences.

ALEC has repeatedly engaged in secretive efforts to push corporate-backed bills in State Houses across the nation while claiming in its IRS filings that it does not spend a dime on lobbying. It is illegal and unethical for an organization to claim 501(c)(3) tax-exempt status – and obtain tax deductions for its corporate funders – when its primary purpose is to pass legislation.

In April 2012, Common Cause filed a whistleblower complaint with the IRS against ALEC, charging that the group misuses charity laws, massively underreports its lobbying, and obtains improper tax breaks for corporate funders at the taxpayers’ expense. Over 4,000 pages of ALEC documents were submitted as evidence. In July 2013, Common Cause teamed up with the Center for Media and Democracy to also expose ALEC’s scheme for raising and spending millions of dollars on legislator travel, hotels and meals, and filed a supplemental whistleblower complaint with the IRS documenting how ALEC has misrepresented and misreported those expenditures on its tax forms.

Common Cause appreciates the work of Senator Durbin and this Subcommittee for holding this hearing. The Senate has ample grounds to investigate the dramatic impact that “Stand Your Ground” laws have on American families and communities, as well as the misuse of federal tax laws to shield the efforts of powerful special interests over our democracy and policy outcomes from public scrutiny.



THE CENTER FOR MEDIA AND DEMOCRACY, MADISON, WISCONSIN, LISA GRAVES,  
EXECUTIVE DIRECTOR, STATEMENT

STATEMENT OF  
LISA GRAVES  
EXECUTIVE DIRECTOR  
THE CENTER FOR MEDIA AND DEMOCRACY  
PUBLISHER OF PRWATCH.ORG, ALECEXPPOSED.ORG,  
SOURCEWATCH.ORG, AND BANKSTERUSA.ORG

SENATE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON  
THE CONSTITUTION, CIVIL RIGHTS, & HUMAN RIGHTS

HEARING ON  
“STAND YOUR GROUND’ LAWS:  
CIVIL RIGHTS AND PUBLIC SAFETY IMPLICATIONS OF  
THE EXPANDED USE OF DEADLY FORCE”

OCTOBER 25, 2013

INTRODUCTION

Mr. Chairman, and Members of the Committee, my name is Lisa Graves, and I am the Executive Director of the Center for Media and Democracy, the publisher of PRWatch.org, ALECexposed.org, SourceWatch.org, and BanksterUSA.org. The organization I lead is a national investigative watchdog group based in Madison, Wisconsin, that has more than 150,000 supporters.

I previously served as the Chief Counsel for Nominations for the Chairman and then Ranking Member of the Senate Judiciary Committee, Senator Patrick Leahy. I also served as Deputy Assistant Attorney General in the Office of Legal Policy/Policy Development at the U.S. Department of Justice and as the Deputy Chief of the Article III Judges Division of the Administrative Office of the U.S. Courts, in addition to other posts in the non-profit sector on national security issues.

I commend the Committee, and its Chairman, for holding this hearing to examine the deadly consequences of so-called “Stand Your Ground” (SYG) laws that have proliferated in the states since 2005, at the urging of the National Rifle Association (NRA) and the American Legislative Exchange Council (ALEC).

SYG laws were peddled by the NRA and ALEC alongside bills to expand the number of people carrying concealed firearms, creating a volatile combination that puts more and more American children and adults at risk of being shot and killed. This Committee has held countless hearings over the years on both federal and state crime policies that affect the rights of Americans, and it is fitting that the Senate examine SYG and the organizations that have urged that SYG become binding law.

I am especially concerned about the activities of ALEC to push the NRA’s agenda into law because ALEC has routinely filed tax returns with the IRS claiming it engages in no lobbying, zero.<sup>1</sup> Yet, ALEC and its agents have routinely bragged about getting SYG introduced<sup>2</sup> and passed – the very definition of lobbying – while claiming to the IRS and the public that it spends not a single dollar on lobbying.<sup>3</sup> Today, I will describe the evidence that shows that ALEC is no ordinary non-profit and the ways in which it has misled the public about the true nature of its activities.

I will also detail the role of the NRA in ALEC and ALEC’s role in pushing for SYG laws.<sup>4</sup> I will also discuss the effect of the three main parts of that law, and how that law affected the initial treatment of George Zimmerman’s killing of Trayvon Martin; how it affected the trial; and how it may affect a civil suit.

In an accompanying appendix to the statement I am submitting for the record, I also describe the role of corporations, such as Koch Industries,<sup>5</sup> and numerous other grantees of the Koch family fortune in advancing the ALEC corporate agenda, along with other aspects of ALEC’s legacy, such as efforts to make it harder for American citizens to vote, as well as its current legislative agenda.

#### **I. ALEC “IS A CORPORATE LOBBY MASQUERADING AS A CHARITY”**

##### **WHAT IS ALEC?**

ALEC describes itself as the largest voluntary group of state legislators in the country, but it is really a corporate-financed lobby that facilitates getting special interest legislation into the hands of lawmakers from every state in the country. In

the words of Bill Moyers,<sup>6</sup> ALEC is “the most influential corporate-funded political force most of America has never heard of” as noted in the “United States of ALEC.”

At the Center for Media and Democracy (CMD), we launched ALECExposed.org in July 2013 after a whistleblower provided me with nearly 1,000 “model” bills secretly voted on by corporate lobbyists through ALEC.<sup>7</sup> We analyzed ALEC’s operations in detail and broke the initial story with The Nation magazine.<sup>8</sup>

Among other things, CMD examined more than a decade of federal tax filings by ALEC, and we discovered that while ALEC likes to tell the press it is an association of lawmakers, more 98% of its revenue is from corporations and sources other than legislative dues.<sup>9</sup> Lawmakers pay nominal “dues” of \$50 a year – largely window-dressing – while corporations pay thousands of dollars a year to be part of ALEC and gain special access to legislators at resorts, up to three times a year.<sup>10</sup> ALEC claims it is just like the National Conference of State Legislators, but we found striking differences: NCSL does not hide corporate-funded trips for lawmakers; in NCSL, the parties alternate leadership, and corporations are not equals to lawmakers in NCSL and do not vote as equals as legislators.<sup>11</sup>

ALEC is the epitome of a pay-to-play operation that gives special interests special access, but the way it conducts its operations is very unusual and troubling. That is why ALEC is subject to no fewer than three separate tax fraud complaints<sup>12</sup> to the IRS, with supporting evidence provided by four groups: Common Cause, Clergy Voice, the Voters Legislative Transparency Project, and my organization, CMD.

#### ALEC IS SUBJECT TO THREE COMPLAINTS ALLEGING TAX FRAUD

1) ALEC is registered as a 501(c)(3) non-profit organization, which means that corporations can theoretically deduct the thousands of dollars they pay ALEC to get their legislative wish lists in the hands of lawmakers. ALEC has routinely told the IRS that it engages in zero lobbying,<sup>13</sup> even though numerous communications have been obtained through open records requests and other sources that show ALEC asking for legislation to be introduced, urging that specific legislation be adopted, and taking credit when its legislation becomes law. “ALEC is no “charity” – it is a lobby that has routinely boasted<sup>14</sup> to its corporate members that each year nearly 1,000 ALEC bills are introduced in state legislatures and nearly 20% become law.

2) A review of ALEC task forces by CMD revealed that almost all of the for-profit corporations that participate in ALEC task forces are represented by their registered lobbyists or are described by their employers as their “government affairs”

staffer within the corporation's internal lobbying shop.<sup>16</sup> CMD and Common Cause have also obtained documents showing that corporations have secretly and routinely sponsored<sup>17</sup> bills at ALEC Task Force meetings and then voted on those bills with legislators at ALEC meetings. Under ALEC's published bylaws,<sup>18</sup> its state legislative leaders are tasked with a "duty" to get ALEC bills "introduced," and they do. Some ALEC corporations then lobby for them without disclosing they pre-voted on them.

That is, as Common Cause pleaded to the IRS, the for-profit corporations that are part of ALEC may also be liable under federal tax laws for taking charitable deductions for activity that is at its root lobbying for legislation through ALEC. CMD agrees with the words of the late former Congressman Bob Edgar, "ALEC is a corporate lobby masquerading as a charity."<sup>19</sup> The potential liability for the tax fraud<sup>20</sup> alleged could subject ALEC, and possibly those bankrolling it, to criminal and civil liability according to Marcus Owens, the former chief of the IRS' non-profit division.

3) ALEC has repeatedly claimed to the IRS that it spends no money on travel for federal or state officials, but CMD has extensively documented that these claims are also contrary to the evidence.<sup>21</sup> DBA Press and CMD obtained a three-year spreadsheet of corporate funding for trips by lawmakers along with the names of every corporation that funded the trips and all of the lawmakers who took them.<sup>22</sup>

The amounts spent on lawmaker travel totaled about \$500,000 per year for lawmakers' hotel, airfare, and other expenses, yet each year ALEC claimed it spent nothing for travel.<sup>23</sup> As CMD wrote in its joint report with DBA Press and Common Cause, ALEC's "scholarships" warrant a thorough IRS investigation of its operations.

CMD also documented that lawmakers routinely solicit<sup>24</sup> funds for these trips from corporations with business before the state and that corporations were told that they could take a charitable deduction for such gifts.<sup>25</sup> ALEC has taken in millions of dollars cumulatively for this travel including one check<sup>26</sup> from PhRMA for \$356,000.

Some states have barred legislators from accepting such gifts,<sup>27</sup> while other states have considered<sup>28</sup> or are considering whether ALEC has violated state ethics laws. We know ALEC told the IRS that state lawmakers control the travel fund while ALEC also told state ethics boards the opposite: that state lawmakers do not control it, ALEC does.<sup>29</sup>

VLTP's Bob Sloan has filed an IRS whistleblower complaint<sup>30</sup> against ALEC based primarily on its scholarship program. Clergy Voice also complained<sup>31</sup> about

ALEC's non-disclosed lobbying and how donations bring lawmakers<sup>32</sup> to meet with corporate lobbyists and ALEC meetings while giving the corporations a tax write-off.

Additionally, CMD and Common Cause recently submitted supplemental<sup>33</sup> evidence to the IRS in support of the initial complaint filed by Common Cause's Mr. Edgar after CMD launched ALECexposed in July 2013. The supplemental filing last month provided the IRS with numerous documents<sup>34</sup> obtained by DBA Press, CMD, and Common Cause in a number of states that show that ALEC has spent a projected \$2 million for lawmaker travel in recent years on the state "scholarship" travel alone – in addition to more sums for lawmaker travel via the ALEC task forces. CMD and Common Cause have also asked each state Attorney General to examine<sup>35</sup> whether ALEC is operating in violation of state law.

#### ALEC'S CORPORATE FUNDERS WERE KNOWN WELL BEFORE THIS HEARING

Accordingly, it is astonishing ALEC and a small number of its legislators – many of whom get their trips to ALEC resort meetings paid for by corporations, whose identities are well known to them – are taking umbrage at this Committee for inquiring about ALEC's legislative agenda and which corporations have bankrolled it. The lawmakers know who funds ALEC's bill machine and their trips, but until we launched ALECexposed two years ago, the public was largely in the dark about these special interests<sup>36</sup> and the one-stop shopping ALEC provides<sup>37</sup> for corporations and trade groups to secretly advance the same cookie-cutter bills in nearly every state.

Despite the hoopla trumped up over Senator Durbin's letter, quite frankly, every single for-profit and non-profit corporation this Committee asked about its support for ALEC and its long-standing gun agenda is a corporation that is publicly known<sup>38</sup> to have funded ALEC or participated in its meetings about bills, based on the investigative research of CMD along with others like Common Cause, DBA Press, VLTP, CAP, Greenpeace, bloggers at Daily Kos, and many, many ordinary citizen sleuths.

Indeed, for more than two years, many thousands of citizens and customers have been conducting a corporate responsibility campaign to ask corporations to stop supporting ALEC's extreme agenda.<sup>39</sup> CMD launched that initiative in July 2013 with a postcard campaign to Coca Cola asking<sup>40</sup> what Coke was doing behind closed doors with ALEC and Koch Industries, and why Coke was supporting a group that was working to thwart efforts to address climate change (and pushing "denialist" legislation), working to make it harder for college students and other Americans to

vote through restrictive Voter ID bills, and, among other things, trying to privatize social security which has long been part of the agenda of David and Charles Koch.

These and other CMD reports highlighting the damaging ALEC agenda being funded by corporations were aided by public outreach by Common Cause, People for the American Way, Progress Now, VLTP, and Greenpeace, to name a few, plus numerous bloggers and concerned citizens. Countless workers and their unions, like AFT, NEA, AFL-CIO, AFSCME, SEIU, and others, have also publicly spoken out about ALEC's extreme agenda. The civil rights group Color of Change also began an effort in late 2011 to contact community engagement representatives of public corporations about their concerns about ALEC's voter restriction agenda.

In the aftermath of public outrage over the way Florida's SYG law was cited to prevent the arrest and prosecution of George Zimmerman's pursuit and killing of unarmed African American teen Trayvon Martin, at least 49 for-profit corporations and six non-profit corporations publicly said they stopped funding ALEC.<sup>41</sup> More than 70 lawmakers<sup>42</sup> sought to break from ALEC, too, and, in addition, more than 100 ALEC members lost or left their seats last year.<sup>43</sup>

CMD has documented which corporations that have left ALEC<sup>44</sup> and those that have continued to fund its meetings,<sup>45</sup> as well as state and national reports on ALEC's operations, through CMD's publications—PRWatch.org, ALECexposed.org, and SourceWatch.org. We have also launched a clearinghouse for information about the "State Policy Network" (SPN)<sup>46</sup> groups that amplify ALEC's legislative agenda, and which is funded by some of the same corporations and foundations. (We have also exposed the funding of Fix the Debt,<sup>47</sup> NFIB,<sup>48</sup> and other fronts.)

#### LOBBYING CANNOT BE ALLOWED TO ESCAPE SCRUTINY BY MASKING IT AS A RIGHT TO SECRETLY ASSOCIATE WITH LAWMAKERS

I find it especially absurd for the *Wall Street Journal*—whose editorial board members have close ties to ALEC that they have failed to disclose in all but one of its numerous editorials and op-eds backing ALEC or the ALEC legislative agenda<sup>49</sup>—to claim that this Committee is engaged in any kind of McCarthyism, by asserting that corporations have been asked "are you now or have you ever been a member." As far as I can tell, every corporation<sup>50</sup> asked about SYG has been publicly documented to have funded or supported ALEC long before now. For more than two years, CMD has been documenting the for-profit and non-profit corporations that have been working behind closed doors with ALEC lawmakers. That list is fully accessible to the public, including Senators and the press, along with the sources.

The *Wall Street Journal's* hyperbole, echoed by some of the SPN “think tanks,” like the Goldwater Institute,<sup>31</sup> that work closely on ALEC’s agenda, is reckless and wrong. The Journal owes the Chairman an apology for its slurs. It also owes its readers an apology for failing to acknowledge its own conflict of interest and that of its editorial board member Steven Moore regarding ALEC in all except one editorial, which was penned after CMD called out the Journal for its failure to acknowledge Moore’s close ties to ALEC. To date, it has still refused to detail how much money, if any, its editorial board member receives from outside for-profit or non-profit groups that he works closely with and then promotes on the editorial page.

Moreover, it is extremely dangerous, in my view, to validate the notion that corporations have an unlimited “right” to keep their identities secret<sup>32</sup> when they are involved in lobbying. Indeed, Republican Texas Attorney General rejected just such a claim last month in response to an ALEC legislator’s efforts to shield ALEC from her compliance with state open records laws under the spurious claim that complying with state transparency laws about groups contacting legislators about changing the law would violate ALEC’s supposed freedom of association for itself and its corporate bankrollers.

Although ALEC denies that it lobbies, hundreds of documents have been provided to the IRS that show ALEC’s staff asking for specific bills to be introduced, voted on, and approved, satisfying the IRS definition of lobbying and related definitions in numerous states. ALEC and its representatives have repeated those denials to the press despite literally pounds of physical evidence to the contrary. Whether the IRS will take action on these claims – in the face of political pressure by some to claim that its examination of a flurry of groups seeking non-profit status focused only on right-leaning groups, even though documents released after the scandal broke reveal the both progressives and “conservatives” were examined – remains to be seen. In my view, it would be a scandal if the IRS did not find ALEC to have engaged in a multi-year pattern of deception in its IRS filings regarding lobbying and trips to resorts for lawmakers, funded by corporations.

ALEC is using corporations with legislative interests before the state to fund its operations, but corporate lobbyists also use ALEC to obtain access to, and funnel gifts of travel to, lawmakers whom they want to change state laws. Recognizing such a putative “right” to hide lobbying activity would limit the actual rights of the people those legislators were elected to represent and limit the ability of citizens to protect against the corruption of our lawmakers. Such a claim of “associational” rights, if

accepted, could be used to thwart not only the enforcement of state ethics laws but also federal lobbying and disclosure laws.

Such claims also fly in the face of long-standing clean government laws, even though such laws – as we have seen and documented<sup>53</sup> in the aftermath of the Supreme Court’s *Citizens United* decision – remain inadequate to obtain all the disclosure needed to protect the integrity of the democratic process. (Unsurprisingly, ALEC opposed the addition of new disclosure rules in response to that case, and its former long-standing member the Center for Competitive Politics in its press release about Senator Durbin’s letter uses that as a vehicle to complain about the Senate’s DISCLOSE Act as a purported abuse of transparency and disclosure rules.)

In a healthy democracy, the powerful cannot just create a secretive “club” made of legislators and lobbyists where legislation is discussed and pushed, and then claim it is a violation of “freedom of association” if a legislative body or a citizen asks who is funding such operations and what legislation has been advanced with such funds.<sup>54</sup> The American people have a fundamental right to know which corporations or special interests are seeking to influence their elected lawmakers, and which corporation’s lobbyists are wining and dining their representatives in our republic.<sup>55</sup> The People have a fundamental right to regulate or bar such corrupting activities.

#### ALEC OPPOSES TRANSPARENCY AND THREATENS STATE SUNSHINE LAWS

In many states citizens have a right to see the letters or emails of for-profit or non-profit corporations that contact lawmakers, in order to help citizens protect against corruption of their representatives. Yet ALEC and its allies have recently started claiming that ALEC has an unlimited right to associate and communicate secretly with legislators that trumps citizens’ rights under state open records laws.

In the aftermath of open records disclosures that have become the basis of complaints to the IRS alleging ALEC is defrauding taxpayers, ALEC has started claiming that its communications with lawmakers – who are part of ALEC because they are lawmakers and who are often put on ALEC Task Forces that coincide with their state legislature’s substantive committee assignment – are no longer subject to, or responsive to, government transparency laws in some states.

ALEC has literally stamped<sup>56</sup> communications about bills it wants lawmakers to introduce with a disclaimer that such documents and emails are not subject to open records laws. It has also demanded that lawmakers give it special treatment and



notify it of every open records request and consult with it before providing any documents to the public.<sup>57</sup> This constitutes a real obstruction of the law, in my view.

One of ALEC's primary objections, its reason for being, is to get state laws changed. As noted above, under ALEC's published bylaws,<sup>58</sup> the state legislative leaders that aid ALEC have been tasked for years with a "duty"<sup>59</sup> to get ALEC legislation introduced into law, as they have for SYG bills and in numerous other areas of the law. ALEC legislative leaders are also tasked with helping to raise funds for ALEC,<sup>60</sup> and as CMD has documented some lawmakers have used their office and official letterhead to solicit money from corporations for ALEC, for their trips.

CMD is in the midst of a fight to preserve open government in Wisconsin, where an ALEC politician is trying to void<sup>61</sup> the state's tradition of transparency by claiming that legislators are now immune from enforcement of open records laws.

That claim by Wisconsin state Senator Leah Vukmir<sup>62</sup> has been condemned<sup>63</sup> by the Wisconsin Freedom of Information Council, which noted that "no lawmaker has ever before tried to defeat the state's open records law by employing this ruse." Papers across the state are editorializing against this effort to thwart transparency.

Another state freedom of information foundation has also condemned<sup>64</sup> a related ALEC attempt to claim a "freedom of association" right against lawmakers complying with traditional open records laws, noting that "ALEC's arguments reflect a dangerous trend of claiming a constitutional right to close the public off from governmental body deliberations," including who is communicating to lawmakers.

The truth is that ALEC successfully moved its legislative agenda in the states in secret for decades with little public scrutiny or sustained attention, before CMD launched ALECexposed.org. Now that the public and press can connect the dots between ALEC corporate funders, the legislation those special interests want adopted, and the lawmakers introducing ALEC bills, ALEC is throwing up all kinds of claims, such as having a right to associate with lawmakers in secret, in spite of laws requiring lobbying and gifts to be disclosed, which ALEC has defied, in my opinion.

ALEC and its allies among some right-wing outlets have also sought to demonize those who dare to speak up about ALEC's agenda and its dubious operations, through the Orwellian claim<sup>65</sup> that when citizens speak out about ALEC and what companies are funding the American people are supposedly suppressing the speech of powerful corporations. But corporations have enormous treasuries to advance their legislative agendas, and people have a right to hold them accountable.

ALEC also seeks to wrap itself in the First Amendment even as its agenda includes legislation to criminalize journalism, as with its bill to impose onerous restrictions on investigations of factory farms (through its “Ag-Gag” bill), for example.<sup>66</sup> ALEC has recently entertained the idea that it might support anti-SLAPP legislation sought by Yelp, but it remains to be seen if its legislators will put any real effort behind that bill or whether this overture will be just a talking point for PR purposes that does not get any momentum from ALEC lawmakers in the states.<sup>67</sup>

ALEC has also claimed to unwitting reporters that its meetings are open to the press,<sup>68</sup> while denying credentials to reporters, denying press *with* credentials from seeing the task force meetings where corporations vote alongside legislators,<sup>69</sup> and hiring security and police officers who have interrogated reporters for speaking to un-credentialed reporters or activists.<sup>70</sup>

It has even circulated “face sheets” containing the photos of those who have written stories critical of ALEC (including me).<sup>71</sup> Its PR operations have also helped deploy opposition research against journalists whose investigations have revealed unfavorable facts about it and then touted such stories in emails to lawmakers.<sup>72</sup>

ALEC has recently decided to use the slogan “Protect Free Speech: Be Heard. Speak Up,”<sup>73</sup> but its record indicates contempt<sup>74</sup> for investigative reporters as well as citizens who speak up and ask to be heard on their objections to ALEC’s special interest legislation and to elected representatives voting on ALEC model bills with lobbyists of out-of-state or even foreign companies,<sup>75</sup> behind closed doors.

The fact that such legislation still has to be voted on in a legislature before it becomes law does not negate what it means for corporations to vote first. Plus, we have seen in recent years that ALEC legislation has been rammed<sup>76</sup> through legislatures by ALEC legislators, often without hearings and allowing no amendments to bills pre-approved by ALEC corporations.

For these and other reasons, the Committee’s inquiry into ALEC is just and modest, under the circumstances. If this Senate cannot make inquiries into a non-profit or for-profit corporation which has enormous influence on lawmaking and which has been accused of federal tax fraud by numerous citizens, then the Senate needs to be reformed and its investigative powers must be made much stronger.

We commend the Chairman’s courage in holding this hearing and for asking tough questions about the shady operation known as ALEC and its role in remaking

U.S. gun laws, as well as many other areas of law affecting people's human rights and civil rights under our federal Constitution and our state constitutions.

## II. THE ALEC/NRA SYG LAWS: THEIR ROOTS AND THEIR FRUIT

### THE LEGAL AND POLITICAL LANDSCAPE BEFORE SYG

By most accounts, the SYG laws that have spread across the country had their genesis in 2005, when the first SYG law passed in Florida, but that ignores the legal and political landscape that preceded that event.

By all accounts, the National Rifle Association is one of the richest non-profit groups in the country. Unlike ALEC, the NRA discloses the costs of its extensive lobbying activities (\$2.9 million federally in 2012, an additional sums in the states, through its "Institute for Legislative Action," the NRA-ILA).<sup>77</sup> The various arms of the NRA had revenues and expenses of nearly 250 million in 2011, the most recent year for which its tax filings are available.

The NRA receives untold sums from global gun sellers, and it also charges \$35 per year for people to become subscribers. The NRA and its related organizations paid its Executive Director, Wayne LaPierre, a corporate-style salary of just under \$1 million in total compensation in 2011, along with hundreds of thousands in compensation it paid to other NRA executives, according to tax forms.

The NRA is a formidable power in American politics, though it counts only a fraction of American gun owners among its members. It had 3.1 million subscribers to its magazines in 2012,<sup>78</sup> out of an estimated 70 million gun owners in the U.S. In addition to lobbying spending, the NRA's PAC spent nearly \$2 million on direct contributions to political candidates (predominantly Republicans) in 2012, and the NRA spent an additional \$19 million on "outside spending" in political advertising, most of which were for negative ads against Democrats and a smaller portion of advertising that favored Republicans.<sup>79</sup> In 2010, the NRA spent an estimated<sup>80</sup> \$28 million on political contributions, outside spending, and federal and state lobbying.

To understand the push for the SYG laws, it is important to understand the election cycles that preceded it. In the 2000 presidential race, the NRA – which is one of the richest non-profit trade and membership groups in the country – ran heavy ads in West Virginia and in Democratic presidential candidate Al Gore's home state of Tennessee.<sup>81</sup> Gore lost both states. In West Virginia, where I

volunteered for ‘Get Out the Vote’ activities, the NRA also bought an hour-length ad to about “60 Minutes” the Sunday before the election that featured hunters and union men in tears, stoked by the NRA that Gore would take away their guns.

In spite of the unprecedented intervention of a majority of the U.S. Supreme Court to stop the recount of votes in Florida counties and the flawed butterfly ballot and ballot punches, part of the political lore<sup>80</sup> of that election has become that Gore lost due to the spending power of the NRA, which worked hard to defeat him in his home region. There was no evidence that Gore had any intent or desire to take away the guns of law-abiding citizens, but that was irrelevant to NRA attack ad campaigns.

After President George W. Bush was sworn in, dozens of new political appointees, such as Ted Cruz who would later be elected Senator from Texas, entered the Justice Department and began working on changing federal laws, including the interpretation and application of gun laws. In the Office of Policy Development, I was the deputy tasked near the end of the Clinton Administration, and after the tragic gun massacre at Columbine, with working with the Deputy Attorney General’s office on gun policy, among other issues. I became the managing editor of the National Integrated Firearms Violence Reduction Strategy, which included inter- and intra-agency recommendations for strengthening U.S. gun laws.

I continued to meet as part of the firearms working group during the transition to the new administration after Bush was sworn in. In the midst of the transition, I learned that one of the first activities of the political appointees on the Justice Department’s gun working group was to go on an outing with NRA reps to a shooting range nearby. I was told that the Attorney General and some of the Schedule C appointees down the hall in the Deputy AG’s office were meeting regularly with NRA reps and critiques of Clinton gun policies John Lott and others.

Subsequently, newly sworn in Attorney General John Ashcroft issued a letter to the NRA<sup>81</sup> effectively changing decades of Justice Department policy regarding the interpretation of the Second Amendment, to state that it protected a fundamental individual right, suggesting that any regulation of that right is subject to strict scrutiny. That position was contrary to assurances he made in his Senate confirmation hearings,<sup>81</sup> but it signaled a sea change for the Justice Department on gun policies. Seven years later, a split Supreme Court – with the addition of two Bush appointees – would rule 5-4 in favor of the position of Ashcroft and the NRA on that point.

As many recall, in the mid-term elections of 2002, the Republicans took back the Senate, and with one-party control of the political branches, Congress lacked the

political will and the numbers to stop the Clinton Administration's "assault weapons" ban from expiring in late 2004, a presidential election year. Bush was declared the winner of that race, and the Republicans also increased their margin in the Senate.

Following that election, the NRA had no major Democratic bogeyman at the federal level to fundraise against or to stoke fears that Democrats were coming for people's guns. A majority of state legislatures and state governorships were also under Republican control, which made it easier for the NRA to get its legislation adopted. I believe the NRA was in search of another wedge issue that would suggest that people's rights were at risk and that would allow the NRA to push through legislation that might aid gun sales while also providing another means to politically punish anyone who dared to vote against its legislative agenda.

#### HOW THE "CASTLE DOCTRINE"/SYG BILL BECAME THE LAW

It is against this backdrop that in late 2004, the NRA's lobbyist and former president, Marion Hammer, invented what became known as SYG legislation.

The bill she "conceived"<sup>85</sup> was dubbed the "Castle Doctrine," a name that evokes the phrase "your home is your castle." The name is misleading because in Florida and in every other state, Americans' rights to defend themselves in their homes from an intruder is well-protected under long-standing laws of self-defense. However, the bill name masked the fact that it was designed to dramatically change the effect of invoking a self-defense claim and to change the substantive law of what counts as justifiable homicide, as described in more detail below.

Ms. Hammer approached two Florida lawmakers who were members of ALEC – Florida state Sen. Durell Peaden (R-Crestview) and Rep. Dennis Baxley (R-Ocala) – to get her idea introduced as a bill.<sup>86</sup> In 2005, Sen. Peaden was an ALEC leader, serving on the Executive Committee of ALEC's "Health and Human Services Task Force." Baxley, a former head of the Christian Coalition in Florida, is also a member of ALEC. His legislative résumé includes sponsoring bills creating license plates honoring the Confederacy and the Rev. Martin Luther King Jr.<sup>87</sup>

The NRA's bill was converted to legislative language with the help of other lawmakers, and it was adopted by both houses of the Florida legislature in the spring of 2005. During the votes, Ms. Hammer was reportedly observed staring down lawmakers. The bill was signed into law on April 26, 2005, by Governor Jeb Bush, with Ms. Hammer, looking over his shoulder.<sup>88</sup>

However, because the new law would require that Florida's jury instructions be changed its implementation was delayed until the fall of the 2005. New jury instructions were to be written over the summer to apply to claims of justifiable homicide before the new law could take effect.

#### HOW THE FLORIDA SYG LAW BECAME AN ALEC "MODEL" FOR THE NATION

In the summer of 2005, at ALEC's annual meeting in Grapevine, Texas, the NRA's Hammer asked legislators and lobbyists at a closed-door meeting of ALEC's 'Criminal Justice Task Force' to adopt the Florida Castle Doctrine/SYG bill as an ALEC model bill.<sup>89</sup> Notably, it was the NRA that brought the bill to ALEC, not the ALEC legislators who sponsored it. That's because, like many ALEC bills, it was really the special interest's legislative agenda, not the brainchild of the legislators.

The NRA-ILA posted at the time that Hammer's pitch "was well received," and the bill was approved "unanimously" at the ALEC Task Force meeting.<sup>90</sup>

That ALEC Task Force was co-chaired<sup>91</sup> by Wal-Mart, the world's largest retailer of ammunition and it is nation's largest seller of guns and ammunition. Also, ALEC Task Force director was Chris Oswald, former "State Liaison" for the NRA.

As noted above, corporate lobbyists and state legislators on ALEC Task Forces have equal votes on proposed model legislation, so the Florida law was ratified by Wal-Mart and its 2005 public sector co-chair, Texas Rep. Ray Allen, along with other state legislators and corporate lobbyists. It was also endorsed by a representative of the Koch-funded Heritage Foundation, according to minutes of the secret meeting.<sup>92</sup> The full list of lawmakers, corporate lobbyists, and special interest groups at that meeting has not been disclosed.

In September 2005, that bill was adopted by ALEC's National Board of Directors, which has a procedure to allow model bills to be approved if there is no objection. At the time,<sup>93</sup> the public sector portion of ALEC's board was chaired by Georgia state Rep. Earl Ehrhart; the corporate board included Koch Industries, Altria (parent of Philip Morris), Coors, Bell South, and Verizon. (ALEC has said its corporate board does not vote. Corporations and elected officials have an equal vote in the task forces, and the board usually defers and ratifies the model bills adopted.)

At the next ALEC Criminal Justice Task Force meeting, in Coeur D'Alene, Idaho, in 2006, the NRA's rep reported on the "continued success" in securing passage of the ALEC/NRA Castle Doctrine/SYG bill in other states.<sup>94</sup>

Similarly, in 2007, an ALEC “Legislative Report Card” boasted that the ALEC/NRA Castle Doctrine/SYG bill was introduced or passed in numerous states. ALEC also highlighted legislators who introduced versions of its model bill, including Texas state Sen. Jeff Wentworth and Rep. Joe Driver.<sup>95</sup>

Then, in 2008, ALEC filed an amicus brief in a U.S. Supreme Court case on the same side as the NRA to adopt the Ashcroft view of the Second Amendment.<sup>96</sup> Later, at the American Conservative Union's CPAC meeting, the NRA's Cam Edwards interviewed<sup>97</sup> Michael Hough, who was then ALEC's “Public Safety and Elections Task Force” director/staffer, to discuss “ALEC's strong relationship with the NRA and explain the support of gun rights and ownership.” Hough told listeners that ALEC worked “with our partners, the National Rifle Association” on the brief.<sup>98</sup>

ALEC's Hough also praised<sup>99</sup> the relationship between ALEC and the NRA on issues like the Castle Doctrine/SYG legislation, stating: “Some of the things that we were pushing in states was the ‘Castle Doctrine,’ we worked with the NRA on that. That's one of our model bills we have states introduce . . . .”<sup>100</sup>

To be clear, this is just one of many instances in which ALEC has talked about what any reasonable person understands to be lobbying, and yet ALEC has repeatedly filed IRS reports claiming to the agency that it does no lobbying at all.

Notably, the NRA was a long-time member and long-time funder of ALEC. An NRA representative was an active part of ALEC's renamed Public Safety and Elections Task Force, and its predecessor task forces, for at least two decades.

Tara Mica, the NRA-Institute for Legislative Action State Liaison, was also the co-chair of ALEC's Public Safety and Elections Task Force in 2008, 2009, and 2010 and into 2011.<sup>101</sup> While the NRA was co-chair, that ALEC Task Force approved legislation to make it harder for Americans to vote through its controversial “voter ID” bill and also the Arizona anti-immigrant legislation, SB 1070, before it was introduced in the state legislature, in addition to other bills that benefit the private prison industry.<sup>102</sup>

To date, the ALEC/NRA Castle Doctrine/SYG bills have been passed in whole or in part in more than two dozen states. Only in the past year or so has the bill become known as the SYG bill as opposed to the Castle Doctrine, which is the name it bears in almost every state in which it was introduced to become law.

In 2012, ALEC announced it was abandoning its Public Safety and Elections Task Force in the wake of the outcry over Trayvon Martin's killer walking free. Despite efforts to distance themselves from the Castle Doctrine/SYG legislation, neither ALEC nor the corporations that are funding it have doing anything to undo the damage done by this law or other aspects of ALEC's extreme gun agenda. Despite its efforts to get the bill adopted, it has done nothing to get them repealed.

#### HOW THE ALEC/NRA SYG LAW CHANGED THE LAW

The SYG law passed in Florida and adopted as an ALEC model in 2005 makes three main changes to the law.<sup>103</sup>

1) It attempts to create immunity from criminal prosecution, which it defines broadly to include "arresting, detaining in custody, charging or prosecuting,"<sup>104</sup> for the use of deadly force if a person who claims self-defense, under certain circumstances.

Under traditional criminal law, when a person is killed the state can arrest a charge a person who uses deadly force with a crime and the defendant can assert a defense to the crime,<sup>105</sup> but pre-SYG a state could not be blocked from arresting a suspect in a killing and letting a jury decide if the use of force was justified. The state has the burden of proof of establishing the elements of intentional murder or unintentional manslaughter, beyond a reasonable doubt, and the defense may seek to argue an excuse for the killing, such as self-defense or, in other words, to claim that the killing was justified and so the defendant should not be convicted. While traditionally prosecutors have discretion not to charge in cases of deadly force, what the SYG law does is attempt to tie the hands of police and prosecutors.

It also changes the burden of proof by creating a legal "presumption" that a person had a reasonable fear of imminent death or great bodily harm if that person kills someone believed to be unlawfully entering a home or vehicle, for example. That is, the person who kills another in those circumstances may not actually have had a reasonable fear of death or serious harm, but the SYG law changes the rules to make the law presume that such fear was reasonable and thus killing was justified. It also provides that someone who "attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence," even if that was not their actual intent.

These presumptions can have the effect of barring the arrest and prosecution of someone who kills another attempting to enter their home. What this means is



that the SYG law is designed to prevent a jury from considering whether someone who used deadly force was justified, acted reasonably, and used reasonable force.

2) Regardless of whether someone who shoots another to death seeks to invoke these presumptions and obtain criminal immunity, the SYG bill also changes the underlying substantive law of the state regarding justifiable homicide.<sup>106</sup>

The ALEC/NRA SYG bill provides that: “A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another, or to prevent the commission of a forcible felony.”<sup>107</sup>

By its terms in the NRA/ALEC model bill, transports the traditional rules for self-defense in one’s home to any place a person has a right to be, including any public place, such as a bar or a sporting event. This is significant because under traditional criminal law a person outside his home has a duty to retreat and avoid using deadly force if possible.

As a result of the SYG law, Florida’s model jury instructions had to be rewritten. Here are the instructions that would have been given,<sup>108</sup> prior to 2005:

“The defendant cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force.

“The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force.”

Here is the jury instruction as a result of the SYG law passing in Florida:

“If [the defendant] was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.”

This jury instruction contains the exact language used in the SYG law.

3) SYG also changes the law to grant immunity from civil suit for a defendant claiming deadly force was justified under the circumstances provided.<sup>109</sup> It does not, however, specify a time-frame for making such a motion.<sup>110</sup>

It also provides that if a judge grants immunity then the plaintiff – the family of the shooting victim – would have to pay the killer’s attorney’s fees and lost wages.

What this part of the law does it make it harder for the family of a shooting victim to sue the killer of their child, spouse, or parent.<sup>111</sup>

It can be difficult to obtain a criminal conviction when self-defense is claimed. A civil trial, however, has many advantages over a criminal trial when someone has died at the hands of another. The first advantage is that the burden of proof is more easily met. Rather proof beyond a reasonable doubt, the plaintiff would have to prove what more likely happened.

The second advantage of a civil case is that, unlike a criminal trial where a defendant cannot be compelled to testify against himself in risk of criminal jeopardy, put the killer under oath. That is, the killer would not be able to invoke Fifth Amendment protections and he or she would be subject to cross-examination by an adversary. If a civil case were not barred by the SYG grant of immunity from suit, a killer who used deadly force causing the death of another would have to justify himself before a jury, which could consider his claims about what happened without any SYG-imposed presumptions that deadly force were reasonable or presumptions that a victim had any intent to use force or violence. Additionally, upon cross-examination, a defendant’s history of violence<sup>112</sup> could potentially impeach him.

However, the SYG law is designed to try to prevent a jury from considering the facts on the merits, without the thumb of the NRA on the scale of justice.

#### STAND YOUR GROUND AND THE ZIMMERMAN CASE

##### BACKGROUND TO THE CASE

Early on a rainy evening on February 26, 2012, George Zimmerman shot and killed Trayvon Martin in a gated community in Sanford, Florida. Martin, an African American teenager who was 17 years old had been walking home to his father’s place, talking on his cell phone, after buying Skittles and juice at a nearby 7-11. Zimmerman, a 28 year-old man, who had called police numerous times to report

people in his neighborhood he considered suspicious, called police dispatch that night after spotting Martin walking near the clubhouse.<sup>113</sup>

Zimmerman, whose wife had left him the night before, had reportedly been in marriage counseling to curb his “anger management issues” and his wife had not returned home the night he shot and killed Martin.<sup>114</sup> Zimmerman had also been taking the prescription drugs Adderall and Temazepam, which have been reported to have side effects of agitation and mood swings in some patients.<sup>115</sup>

Zimmerman also had a history of violence.<sup>116</sup> He had been charged with felony assault on a law enforcement officer and violent resisting of arrest. When an undercover officer showed Zimmerman his badge and asked him to step away from a friend under arrest, Zimmerman reportedly said, “I don’t care who you are.” When the officer asked him to leave, Zimmerman reportedly said, “F\*#@ you.”<sup>117</sup>

The officer stated that when he “attempted to escort Zimmerman away from the interview area, he shrugged away from me, and then pushed my arms away with his hands. After a short struggle with Zimmerman he was placed in handcuffs and detained” for transportation to jail.<sup>118</sup> He ended up pleading down the charges stemming from an altercation with an undercover officer, and he was required to apologize to him and take anger management classes to get the case dismissed.<sup>119</sup>

Additionally, Zimmerman’s former girlfriend had filed a complaint with a Florida court alleging that he had watched her, had refused to leave her home, taken her phone, and assaulted her, that he had previously hit her in her face, and that another time he had thrown her down on the bed despite her repeated objections.<sup>120</sup> Zimmerman counter-claimed after a domestic violence protection order was issued against him alleging that his ex started their fights, and ultimately the court ordered them both to stay away from each other.<sup>121</sup>

None of that history was known to police the night Zimmerman shot Martin.

During the call with police dispatch, Zimmerman used expletives in discussing his observations of Martin, saying things like “these a@#%\$#@s they always get away,” stating “s#&t, he’s running,” adding either “f@#&%g goons” or “f@#&%g coons,” a matter in dispute.<sup>122</sup> Zimmerman also told the dispatcher there had been break-ins in the complex (although he knew an African American man had been arrested for burglary).<sup>123</sup>

When he told the police dispatcher that he was following the person later identified as Martin, the dispatcher told Zimmerman "we don't need you to do that," but moments later Zimmerman hung up with the dispatcher and went looking for Martin.<sup>194</sup> Zimmerman did not tell the dispatcher he was armed with a semi-automatic handgun that night.

What happened in the 80 seconds between the time Zimmerman hung up to pursue Martin (at 7:15 and 23 seconds)<sup>195</sup> and the time of the first 9-1-1 call from a neighbor concerned about a loud and violent fight (at 7:16 and 43 seconds)? Only two people know and one of them was killed that night. (This timeline is based on a timeline prepared by the police that was filed with the court.)

Zimmerman shot and killed Martin 37 seconds later (at 7:17 and 20 seconds), according to police records. Minutes earlier Martin had been talking with two friends on his cell phone on his way home from the store and trying to stay out of the rain.

Zimmerman claimed – not under oath or subject to cross-examination in court – that Martin jumped him and hit him, causing him to fall down and allowing the 158-lb teenager to sit on his stomach, with his legs astride Zimmerman's body, banging his head against the ground, and putting his hand on Zimmerman's mouth.

He also claimed that somehow Martin saw the black gun that Zimmerman wore in a black holster on his back underneath his jacket and other clothing and grabbed the gun out from under the 200-lb Zimmerman, but that Zimmerman was able to get the gun, pin Martin's hand to Zimmerman's side and shoot Martin at an angle that was straight through his heart, a scenario disputed by prosecutors and others.<sup>196</sup>

There was no DNA from Martin and there were no fingerprints from Martin found on Zimmerman's gun.

There was conflicting evidence about who was on top during various parts of the fight in which "Mixed Martial Arts" style punching was observed and whose screaming for help was heard on the 9-11 tapes before the screams abruptly stopped along with the sound of the gunshot. There was also conflicting evidence about the words spoken by each of them on the path to the home of Martin's father. The fistfight that ensued after Zimmerman chased after Martin ended in Martin being shot to death.

When police arrived, Martin was lying face down with his hands under his body.<sup>127</sup> First responders noted that a cold can of Arizona brand juice was found still sitting in the pocket of Martin's hoodie when first responders tried to revive him (it had not been used as a weapon against Zimmerman). Zimmerman refused any medical treatment that night.

Martin's body later tested positive for a trace amount of marijuana, and he had been staying with his father after being suspended for school for graffiti and having a baggie with marijuana residue. Unlike Zimmerman, Martin had never been charged with committing a violent crime or subject to a protective order for violence. (A majority of high school seniors in the U.S. have experimented with marijuana.)

Investigators later learned that Zimmerman had been taking Mixed Martial Arts classes, although he was no expert, and he had been taking criminal justice classes including classes that discussed Florida's SYG law. Zimmerman had obtained a permit to carry a concealed firearm.

#### HOW SYG WAS INVOKED IN THE ZIMMERMAN CASE

It is difficult to imagine the fear of Martin's parents when he did not come home that night and the immense sorrow his father experienced upon arriving at the police station to report his son missing only to learn that his son had been killed. It is hard to imagine the shock of Martins' parents, Tracy Martin and Sybrina Fulton, in the midst of their grief at learning that their son's killer had been set free and would not be charged with any crime for shooting their beloved son to death.

Florida's SYG law was initially cited to prevent the arrest and prosecution of George Zimmerman for killing Trayvon Martin. After national outrage that Zimmerman's claim of justifiable homicide would not be allowed to be heard by a jury, the county decided to charge Zimmerman with murdering or killing Martin.

Before the trial, Zimmerman's attorneys made a public announcement that they would not be invoking the SYG laws provisions for criminal immunity, but they announced that they might invoke the SYG's civil immunity if he were sued.

During the trial, the jury was instructed that it had to consider the following in considering whether Zimmerman's shooting of Martin was justified, based on SYG:

"If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had

the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.”<sup>128</sup>

Zimmerman was acquitted in July 2013. Here is what one of the jurors said shortly after the verdict about what they were told the law required them to consider:

“The law became very confusing. It became very confusing,’ she told Cooper Monday night. ‘We had stuff thrown at us. We had the second-degree murder charge, the manslaughter charge, then we had self defense, Stand Your Ground.’

“Juror B37 mentioned Stand Your Ground a second time of her own accord, saying the jury ultimately made its not-guilty verdict Saturday night based on the evidence and ‘because of the heat of the moment and the Stand Your Ground.’”<sup>129</sup>

Notably, the jury was not instructed whatsoever about Trayvon Martin’s rights that night, under the law, to stand his ground and meet any force with force.

#### HOW THE ALEC/NRA SYG HAS AFFECTED OTHER SHOOTING VICTIMS

Since Florida’s SYG law became effective in 2005, the rate of homicides claimed to be legally “justifiable” in Florida has jumped by 300 percent. Below, are descriptions of seven<sup>130</sup> of the many victims of the NRA-conceived bill, which ALEC had deemed a “model” way to change the law in all states.

1) Demetrius (“DT”) Thompson,<sup>131</sup> 21, was near the house of a woman who was reportedly his step-father’s ex-girlfriend in Jefferson County, Alabama, one morning in May 2013. The woman, whose name was not released, was walking her dog and saw someone run by her home and went inside to get a gun. She told police later that she was concerned because her boyfriend had been robbed recently. She walked back outside, and saw a man walk towards her that she says she did not recognize. She told police that she told him to stop, and that she was armed, but he continued to approach. She fired, and Thompson died at the end of her driveway.

The Jefferson County District Attorney’s Office ruled woman had acted in self-defense and that killing Thompson was justifiable under the state’s SYG law. “I wished we knew what his intent was and why he didn’t stop, but those are questions that will go unanswered,” said Chief Deputy Randy Christian. According to Think Progress, “Unfortunately, little else is known about the case, and likely never will be now that the inquiry has ended with the state’s Stand Your Ground law.”

2) Daniel Adkins, Jr.,<sup>132</sup> 29, was the only son of Daniel and Antonia Adkins of Phoenix. He was mentally disabled and lived with his parents. In April 2012, on his evening walk with his dog, he stepped in front of a car in a Taco Bell drive-thru.

The driver, Cordell Jude, 22, claims he mistook the bright green dog leash in Adkins' upraised hand for a bat or a pipe, according to the police report. Jude, who carried a Smith and Wesson .40-caliber handgun at his hip, shot him once in the torso and killed him. He stayed at the scene afterwards because Adkins' dog on his leash was still was apparently in the way of the car. But police did not arrest Jude.

John Roman, a fellow with the Justice Policy Center at the Urban Institute, called the shooting a prime example of the trouble with "Stand Your Ground," which Arizona made law in 2006, with the NRA's support. He told USA Today that, because of the law, police couldn't arrest the shooter and question him in detail, although the police recommended second-degree murder charges against Jude.

Adkins was unarmed.

3) Bo Morrison<sup>133</sup> was a 20 year-old graduate of Milwaukee Area Technical College who worked at a local home improvement store, according to his family.

According to the Milwaukee Journal Sentinel and the report of the Washington County District Attorney, on the early morning of March 3, 2012, Morrison was at a party with about 20 other young people in a detached garage adjacent to a house in the village of Slinger, Wisconsin.

A next door neighbor, Mark Kind, was awoken by loud music playing inside a car parked in the driveway adjacent to the garage, had a verbal confrontation with those inside the car, and went back inside to call the police. The police arrived, but were unable to gain entry to the garage, and withdrew to wait nearby. An adult, who had been asleep in the house, emerged about an hour after the initial disturbance, telling the young people that the police had the garage surrounded.

Several people, including Morrison, ran from the garage. Morrison, who had been drinking and had a blood alcohol content of .19, was under a bail bond condition of sobriety. He ended up on Kind's back porch, where friends said he had gone to hide from police. Kind heard noise on the porch and, despite knowing that police were less than 300 feet away, chose to get a gun and investigate. The Milwaukee Journal Sentinel reported, "When police arrived, they found Morrison

still crouched between the dresser and refrigerator, but found a bullet hole in the wall 49 inches from the floor. Morrison had been shot through the heart and lung.”

District Attorney Mark Bensen said in his report, “Various individuals made poor decisions that night which contributed to the sequence of events which ultimately resulted in the shooting death of Mr. Morrison.” Bensen concluded that Kind shot Morrison in self-defense and that prosecution was barred by Wisconsin’s new Castle Doctrine/SYG law, which included key elements of the ALEC/NRA model bill and was signed by Governor Scott Walker in December 2011, applied.

Morrison was unarmed.

4) Brandon Zeth<sup>134</sup> was 24 years-old, a mechanic and outdoorsman in Altoona, Pennsylvania. In early 2012, he was inebriated and tried to return to his girlfriend’s house late at night, but accidentally ended up on the back porch of the nearly identical house next door, pounding on the window of a stranger rather than his girlfriend, according to WTAJ News.

The homeowner Timothy Lepore, who is in his early sixties, reportedly shot him five times, twice in the arms and three times in the chest, with a .22 caliber gun. Police report there is no evidence that Zeth tried to break in to the house.

“We don’t know if he is going to live or if he is going to die, just because this man shot him outside on his porch,” Zeth’s father Don told WTAJ News, who said he wanted everyone to see, “what he did to that boy for being at the wrong place at the wrong time.” Zeth later died of complications from the gun shot wounds after spending a month at a Pittsburgh hospital, according to the Associated Press.

Lepore’s attorney, Steve Passarello, told WTAJ News that “his client was legally in the right to shoot him to keep him out of his home according to the new Castle Doctrine.” The Blair County District Attorney’s office announced that it would not press charges because “it is legally prohibited” from doing so by the “current State of Pennsylvania law,” even though Lepore’s actions were “regrettable.”

Zeth was unarmed.

5) Pedro Roteta was 26-years old, a young barber who loved his nephews. But in early 2012, he tried to steal a radio out of Greyston Garcia’s truck in Miami, Florida. Garcia’s roommate alerted him to the attempted theft, and according to the Miami Herald, he grabbed a large knife and ran outside towards Roteta.



Roteta ran, and Garcia chased him for more than a block, according to the Huffington Post. He then stabbed him in the back, killing him.

A Miami-Dade County Judge recently threw out the murder charge against Garcia, citing Florida's SYG law. Miami police sergeant Ervens Ford, who supervised the case, called the law and the decision a "travesty of justice" and said to the Miami Herald, "How can it be Stand Your Ground? It's on [surveillance] video! You can see him stabbing the victim . . . ."

Roteta was unarmed, except for a pocketknife that remained unopened in his pocket. Garcia admitted to homicide detectives that he attacked Roteta even though "he actually never saw a weapon."

6) Billy Kuch<sup>135</sup> was 23 years-old in 2009. His parents say he was bipolar and had a drinking problem. One night, he stumbled to the front door of the wrong house in a neighborhood of identical houses in Land O'Lakes, Florida.

According to the Tampa Tribune, the homeowner, Gregory Stewart, "opened the door and told Kuch to leave, then went outside and searched the area to make sure he did. Kuch returned later and again tried to open the front door. This time, Stewart grabbed his .40-caliber semiautomatic handgun and told his wife to call 911." But Kuch "had an unlit cigarette in one hand and a shirt in the other. He wanted to borrow a lighter." Kuch put his hands up in the air, palms facing forward. According to the Tribune, "He was mumbling incoherently and swaying. But he took a few steps toward Stewart before Stewart fired one shot."

According to the Times, "The bullet ripped into Kuch's chest, nicked his heart, shot through his liver, in and out of his stomach, through his spleen, then out his back. He felt like his body was on fire." He was hospitalized in an intensive care unit for more than a month, spending much of that time in a coma, but he survived.

Stewart was originally charged with aggravated battery, but two months after the incident, the state decided the shooting was "justified by Florida's SYG law.

Kuch was unarmed.

7) Christopher Cote<sup>136</sup> was 19 years-old in 2006 when his family moved to a neighborhood in West Palm Beach, Florida. In the early hours of September 17,

2006, according to the Florida Sun Sentinel, Cote confronted his neighbor, Jose Tapanes, over whether or not Cote was walking his dog on Tapanes' property.

The two had apparently argued earlier in the day, and according to the Palm Beach Post, Cote had thrown a beer bottle at Tapanes that night.

Tapanes shot Cote with his shotgun. According to Assistant State Attorney Andrew Slater, the first bullet grazed Cote's abdomen, and he was incapacitated, but Tapanes still shot a second time. "Cote is stumbling. He is no longer a danger, and the defendant can see what is going on," Slater said. "Why fire a second time?"

Cote died in his mother's arms. Due to a mistrial, Tapanes was tried twice for first degree murder. He was convicted of manslaughter the first time, and faced 15 years in prison. At the second trial however, he was acquitted based on the SYG law.

Cote, like six other victims above, was unarmed.

### III. APPENDIX

#### ALEC'S LONG AND DEADLY LEGACY ON GUNS AND OTHER ISSUES

##### ALEC'S GUN AGENDA FLOURISHED WITH KOCH INDUSTRIES ON ITS BOARD<sup>137</sup>

Aside from SYG, ALEC has advanced numerous other extreme gun laws over the years and these bills have been pushed during the watch of Koch Industries as a leader and funder of ALEC. Koch Industries has had a seat on ALEC's board for almost two decades, as many NRA bills became ALEC models. An exploration of other entities funded by David or Charles Koch shows that this is no outlier and that other Koch-backed groups have also helped advance the gun agenda in various ways.

The earliest reported reference connecting Koch to ALEC is almost two decades old. In 1994, Charles and David Koch were singled out for ALEC's highest award for corporate titans, the "Adam Smith Free Enterprise Award."

Perhaps ALEC's leaders did not read far enough into Smith's "Wealth of Nations" to see his admonition against the instruments of the free market getting involved in lawmaking. Smith expressly urged that any law proposed by businesses "ought always to be listened to with great precaution . . . It comes from an order of men, whose interest is never exactly the same with that of the public, who have

generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.”

At the time, in 1994, ALEC said it was singling out the Kochs as “two of the nation's foremost advocates of the American free market system.” ALEC's corporate board chairman, Ron Scheberle, then with GTE, a predecessor of Verizon, handed this award to the Kochs. Scheberle is currently the Executive Director of ALEC.

Starting in the 1970s, the Kochs had started to invest in groups to promote expanded corporate power under a “free market” mantle that called for the privatization of modern American innovations, like Social Security and universal public education. By the late 1970s, the Kochs had spent enough money seeding such groups that insiders dubbed their operation the “Kochtopus” long before it was given that name by outsiders a few years ago.

Charles Koch co-founded the CATO Institute, which began assailing Social Security in the 1970s, and he also funded academic programs to advance his agenda at the University of Kansas and George Mason University. David ran unsuccessfully for Vice President in 1980 on a similar platform and was able to get campaign donation limit rules that would otherwise apply by bankrolling his campaign. After losing, he turned his attention to other ways to accomplish his agenda, such as through the group Citizens for a Sound Economy (CSE). As of the time ALEC gave its highest corporate award to the Kochs in 1994, David was on the Board of the Reason Foundation and CATO, and was Co-Chairman of the Board of CSE.

#### ALEC'S GUN AGENDA SINCE KOCH JOINED ITS BOARD<sup>188</sup>

Although Koch Industries has sought to distance itself from NRA's gun agenda (pointing out that it opposed legislation to allow guns in the workplace), the facts tell a different story, as it is one of several corporations that helped fund and lead ALEC while it pushed for numerous extreme bills on the NRA's wish list.

ALEC has also emphasized that only the public sector members of its board can vote to approve model bills, even though ALEC's corporate members vote on bills through its task forces. That is true, but it is incomplete because Koch Industries has had a seat on ALEC's corporate board while ALEC's legislative agenda on guns flourished. And, an untold sum of Koch Industries and Koch family foundation money has also funded ALEC operations over the past nearly two decades. Here are some of these ALEC bills.

#### BARRING CITIES FROM SUING GUN MANUFACTURERS FOR HARMS CAUSED<sup>189</sup>

In 1995, after Koch Industries joined ALEC's board in the person of Michael M. Morgan of its government affairs shop, ALEC issued its annual legislative scorecard touting its success in having its model bills introduced or enacted in state legislatures that spring. ALEC noted that its crime task force had the most bills echoing the ALEC agenda introduced, 199 bills in all that year.

One of the bills highlighted by ALEC in its legislative scorecard for 1995 was the "Consistency in Firearms Regulation" Act. This bill would bar cities from enacting their own gun regulations if a state did not agree. This ALEC bill passed in Georgia and Utah that year, and it had been introduced in eight other states.

Kansas was one of the states where the NRA's effort to bar cities from suing gun manufacturers was introduced in 1995. Who was one of the private sector co-chairs for ALEC's agenda in Kansas in 1995? Koch Industries, as represented by Morgan. There is no indication Morgan lobbied in the Kansas State House for that ALEC bill and there are no public records indicating that he lobbied against this part of the ALEC agenda from becoming binding law in Koch Industries' home state, which it ultimately did.

#### A BOUNTY OF ALEC GUN BILLS IN THE MID-1990S, SUCH AS OPPOSING THE ASSAULT WEAPONS BAN<sup>190</sup>

When Koch became a leader of ALEC back in 1995, ALEC's publications also proudly touted its gun agenda and the Second Amendment right to bear arms, in contrast to ALEC's recent attempts to distance itself from this agenda.

That year, ALEC opposed state efforts to ban "assault weapons," through its resolution on "semi-automatic" firearms, which was disseminated that year. In that ALEC resolution, the organization acknowledged the bar on machine gun sales in existence since 1934. This stands in sharp contrast to the ALEC Public Safety and Elections Task Force amendments at its meeting in Arizona in December 2011, where the NRA obtained unanimous support from its corporate and lawmaker members to revise the Consistency in Firearms Regulation Act to expressly bar cities from banning "machine guns."

In 1995, ALEC also promoted as model legislation a bill that would create state-based criminal background checks for firearms purchases different from the federal Brady Handgun Violence Prevention Act, which established the National

Instant Check criminal background check system at the FBI. ALEC's bill expressly exempts firearms sales at gun shows from its background checks (creating a "gun show loophole"). It also exempts holders of "concealed carry" permits from a background check, but the federal provisions attempt to protect the public regardless of whether a person had previously obtained a permit to carry a gun, such as fugitives and persons adjudicated to be mentally unstable.

**BLOCKING CITY SUITS AGAINST GUN MANUFACTURERS, AGAIN, BUT NOW WITH  
KOCH AS CORPORATE CHAIR<sup>141</sup>**

In 1996, ALEC reported to the legislators and corporations on its joint board that it was in a financial crisis, needing a half-million dollars immediately and over a million dollars in the near term to remain in existence. In 1997, the Kochs gave ALEC a loan for \$430,000. That year, Koch Industries became the First Vice-Chairman of ALEC's private sector board, second in its leadership behind Coors.

In 1999, ALEC reaffirmed its commitment to the "Consistency in Firearms Regulation," which barred cities from suing gun manufacturers. Notably, the preceding year, the City of New Orleans had filed the first municipal lawsuit against gun manufacturers based on the tobacco litigation, and other cities soon followed.

Who was the chairman of ALEC's governing corporate board? Koch Industries, represented by Morgan, was the chairman that year.

**OPPOSING GUN MANUFACTURER CODES OF CONDUCT THAT PROTECT KIDS AND  
PREVENT GUN CRIME<sup>142</sup>**

In 2000, ALEC adopted the "Defense of Free Market and Public Safety Resolution," as a national template for states across the country. That resolution was an effort to thwart law enforcement from using contracts to buy firearms for police officers to favor gun manufacturers that adhered to a code of conduct. Smith & Wesson (S&W) had become the first gun manufacturer to settle one of the municipal lawsuits.

Part of that settlement included requiring its retailers to sell all of its handguns with mechanical trigger locks to help protect kids from accidentally killing themselves or others. The settlement also penalized S&W retailers whose sold guns tended to end up used in crimes, barred S&W retailers from using the gun show loophole to avoid conducting criminal background checks on prospective buyers, and forbade dealers from releasing more than one handgun to a purchaser per day.

ALEC's resolution sought to bar states from rewarding S&W with contracts for police weapons or creating an incentive for other gun manufacturers to adopt similar voluntary codes of conduct.

Who was the chairman of ALEC's corporate board in 2000? Koch Industries.

Koch continued as ALEC's corporate chairman in 2001 and 2002, until PhRMA became the chairman of the board in 2003. With the Bush Administration in the White House and the nation dealing with the aftermath of the attacks of September 11th, gun legislation was not on the front burner in those few years.

#### ALEC PUSHED CONCEALED CARRYING OF GUNS ACROSS THE STATES AND THE CASTLE DOCTRINE/SYG<sup>143</sup>

After the presidential election year in 2004, ALEC chose to bills to expand the rights of gun owners with concealed carry permits and bills to require reciprocity among states, in addition to the Castle Doctrine/SYG discussed above.

#### PUNISHING COPS FOR DISARMING PEOPLE IN RESTORING ORDER TO DISASTERS<sup>144</sup>

After the natural disaster of Hurricane Katrina in 2005 and the manifold failures of the Bush administration's emergency response team, stories arose that some guns were seized in the effort to restore order to the chaos that emerged during the disastrous storm and its more disastrous aftermath. In 2006, ALEC passed a resolution that would subject law enforcement officers to up to 10 years in jail if they seized firearms during an emergency like that natural disaster. Under ALEC's model, cops could also be sued for seizing guns, even in an effort to restore public order, and could lose their jobs for doing so.

ALEC publications from that year also touted the introduction and passage of the SYG/Castle Doctrine model bill in other states. Koch Industries was on ALEC's corporate board in 2006.

#### ARMING KIDS ON COLLEGE CAMPUS AFTER STUDENT MASSACRED HIS PEERS<sup>145</sup>

In 2008, in the aftermath of the tragic gun massacre of students and teachers by a heavily armed Virginia Tech student in 2007, ALEC adopted a model bill to remove prohibitions of guns on college campuses and even to allow college students to have concealed carry permits to allow them to bring guns to class.

Also that year, ALEC sought to weigh in on the pending Supreme Court case called *McDonald v. Chicago*, filed to challenge the handgun ban in the city of Chicago and elsewhere. In 2008, Koch Industries remained steadfastly on ALEC's corporate board of directors. It also held a seat on ALEC's corporate board in 2009.

**KOCH JOINED ALEC'S PUBLIC SAFETY AND ELECTIONS TASK FORCE, CO-CHAIR-ED BY THE NRA; ALEC SAID CITIES SHOULDN'T BE ABLE TO BAR MACHINE GUNS<sup>146</sup>**

It is not clear when Koch first joined ALEC's crime task force because the public record is incomplete. What is known is that the first time a full roster of that task force becomes publicly available, Koch Public Sector was listed as a private sector member of that task force in 2010. The NRA was the task force's co-chair.

In 2011, Koch Public Sector was also listed on the roster of that task force. That same year, the NRA introduced amendments to expand the reach of the ALEC model bill on "Consistency in Firearms Regulation," to expressly stop cities from barring "machine guns" and "submachine guns." There is no public record, one way or the other, indicating whether Koch's reps attended that meeting and joined in the unanimous support the NRA's amendments received from the task force's private sector members in those closed door meetings.

In 2010 and 2011, Koch also remained on the corporate board of ALEC, a position it continues to hold through the present day.

**THE KOCH-FUNDED ALEC IS NOT ALONE AMONG KOCH-FUNDED GROUPS THAT PUSH NRA VIEWS OR WORK WITH THE NRA<sup>147</sup>**

ALEC is not the only group funded by Koch corporate money or the Koch family fortune that has pushed the NRA's positions on guns.

For example, the CATO Institute, which was co-founded by Charles Koch, has issued numerous papers siding with the NRA's view on guns in ways that echo ALEC's affinity for the NRA as well. Similarly, the Reason Foundation, where David Koch sits on the board, also has produced numerous articles favoring the NRA's position on guns through its Reason magazine. There is no public record showing whether the Kochs urged or opposed this work.

Dating back more than two decades, CATO has been involved in ALEC, advancing its agenda through ALEC. CATO representatives have also been part of

ALEC's secretive task force meetings where the private sector representatives vote as equals with state lawmakers on various model bills.

Additionally, the Institute for Humane Studies, which Charles Koch has long advanced and funded, has routinely offered students the opportunity to become a "Charles G. Koch Summer Fellow" and intern at one of a network of groups on "gun control/Second Amendment" issues, if the student makes it through the screening process to assure his or her right-wing bona fides.

Americans for Prosperity, which is chaired by David Koch, has also worked with the NRA to train and mobilize gun owners.

#### KOCH HAS DENIED ROLE IN CONTROVERSIAL SYG LAWS<sup>148</sup>

Koch Industries notes that it "has no involvement whatsoever with the defense of George Zimmerman, the defendant in the Trayvon Martin case."

Its legacy tells a more complex story. In myriad ways over almost two decades, Koch has bankrolled ALEC's operations and led ALEC as a board member while ALEC advanced as "model" bills numerous extreme gun laws, including one based on the SYG law implicated in the Zimmerman case.

That is only one part of the ALEC agenda, which includes tax breaks for corporations and efforts to undermine holding corporations accountable in litigation and through regulations.<sup>149</sup> ALEC legislation has made it harder for Americans to vote, made it harder for Americans to hold corporations fully accountable when their products kill or injure loved ones, made it harder for workers to organize and for unions to represent workers, blocked efforts to raise the minimum wage, thwarted efforts to address climate change, and spearheaded the privatization of schools, prisons, social security, infrastructure, and basic government services.<sup>150</sup>

Although ALEC has sought to distance itself from its legacy on guns, voter restrictions, immigration, and prisons, ALEC's legislative agenda reaches into almost every area of American life: worker and consumer rights, education, the rights of Americans injured or killed by corporations, taxes, health care, immigration, and the quality of the air we breathe and the water we drink.



## CONCLUSION

For all of these reasons, I applaud the Committee's consideration of the damaging effects of the SYG laws, the effect of these laws, and who is behind them.

Thank you for considering my views.

Lisa Graves, Executive Director of the Center for Media and Democracy

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- <sup>136</sup> <http://www.prwatch.org/news/2013/06/11384/seven-faces-nraalec-approved-stand-your-ground-law>
- <sup>137</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>138</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>

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- <sup>139</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>140</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>141</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>142</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>143</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>144</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>145</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>146</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>147</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>148</sup> <http://www.prwatch.org/news/2012/05/11512/cmd-special-report-alecs-gun-agenda-flourished-koch-industries-board-other-koch-f>
- <sup>149</sup> [http://www.alecexposed.org/wiki/Fact\\_Sheets](http://www.alecexposed.org/wiki/Fact_Sheets)
- <sup>150</sup> [http://www.alecexposed.org/wiki/ALEC\\_Exposed](http://www.alecexposed.org/wiki/ALEC_Exposed)

AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC), ARLINGTON, VIRGINIA, LETTER  
TO SENATOR DURBIN



August 8, 2013

The American Legislative Exchange Council  
2900 Crystal Drive, Suite 600  
Arlington, VA 22202

Senator Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510-1304

Dear Senator Durbin:

As Americans, we have the right to exercise our free speech and assembly as individuals or as a group. Both voices are protected by our government's founding document.

We understand letters from your office were recently sent to a variety of private companies and citizen groups demanding information about their participation in the American Legislative Exchange Council—information no group is required to disclose.

Our Constitution's First Amendment guarantees Congress shall make no law abridging the freedom of speech or assembly, including participation in organizations such as labor unions, trade associations and 501(c)3 educational nonprofits, like ours.

The American Legislative Exchange Council provides a forum to facilitate the exchange of policy ideas from a variety of perspectives. Model policy and resolutions are developed by legislator members of the organization and may or may not reflect the positions of any individual member, company, association or non-profit. The only results of ALEC exchanges are resolutions of support for ideas. Before any elected official considers potential legislation in his or her state, he or she considers inputs from all perspectives including other legislators, constituents and coalition groups.

While you may disagree with our organization's policies, members of the American Legislative Exchange Council have the right to discuss them. Additionally, the Tenth Amendment ensures those powers not specifically enumerated in the Constitution be reserved for the states. As such, ALEC brings together state legislators to discuss state-based policies.

The American Legislative Exchange Council does not maintain model policy on "stand your ground." And while the ongoing conversation about "stand your ground" is unrelated to ALEC, it is fundamentally a conversation about individual state legislatures' rights to enact policies supported by their citizens.

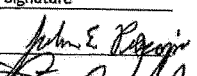
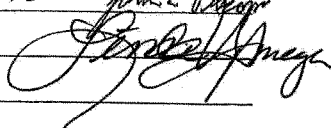
Whereas, the Tenth Amendment guarantees the various states to make decisions on policy not constitutionally granted to the federal government, states are entirely within their Constitutional rights to pass legislation discussed and debated by locally elected officials based on the community culture in their respective states.

Regardless of these facts, it remains that the American Legislative Exchange Council is not a voting entity in any regard, but rather an organization that provides a forum for the discussion of nonpartisan policy analysis, study and research. It further remains, the American Legislative Exchange Council has no current policy whatsoever regarding firearms or self-defense. These facts can be verified by consulting the current adopted model policies at [www.alec.org](http://www.alec.org).

The contents of your letter are eerily similar to the questions asked by the Internal Revenue Service of other citizen groups the IRS deemed as politically conservative. Questions such as the individual donors, purposes of organizational events and contents of meetings are clearly a violation of the First and Tenth Amendments and the general jurisdiction of a federal office holder.

It would seem more prudent for someone in your position to exercise the power of your office as Chairman of the U.S. Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights to ensure our Constitution protects the civil and human rights of all Americans to exercise their voices and engage in general assembly with those who share their values and ideas, absent your own political motivation.

CC: Senator Al Franken                      Senator Ted Cruz  
       Senator Christopher A. Coons        Senator Lindsey Graham  
       Senator Richard Blumenthal        Senator John Cornyn  
       Senator Mazie Hirono                Senator Orrin G. Hatch

Name	State	District	Signature
John Piscopo	CT	76 <sup>th</sup>	
Linda Upmeyer	IA		



Name	State	District	Signature
Greg Forstall	Iowa	32	Greg Forstall
James Rose	IL.	37	James Rose
GARY STANISLAWSKI	OK	35	Gary Stanislawski
GERNIE W. MORRISON	TEXAS	30	Gernie W. Morrison
Amy Sinclair	Iowa	14	Amy Sinclair
Lee Denney	Oklahoma	33	Lee Denney
Kris E. Roberts	NH	4	Kris E. Roberts
Barbara K. Cegavske	Nevada	8	Barbara K. Cegavske
Scott Hammond	Nevada	18	Scott Hammond
Manny Steele	S.D.	12	Manny Steele
David C. Burns	Maine	Senate Dist 29	David C. Burns
Caggy Mast	Ks	House 76	Caggy Mast
Rita Martinson	Miss	58	Rita Martinson
DENNIS HEDKE	KS	99	Dennis Hedke
JOHN KAVANAGH	AZ	23	John Kavanagh
Leslie Hummon	SD	8	Leslie Hummon
Susan Martin	NC	8	Susan Martin
Matthew Conti	CO	55	Matthew Conti
Marlene Anelschi	OH	6	Marlene Anelschi
Steve Nass, Rep.	WI	33	Steve Nass
Randy Garber, Rep	KS	62	Randy Garber
Randy Alexander	AR	88	Randy Alexander

Name	State	District	Signature
Dan G. Pittenger	Iowa	HD 75	Dan Pittenger
Elen M. Mearns	OK	HD 68	Elen Mearns
Woody Dutton	Indiana	HD 58	Woody Dutton
LEE Collier	New Mexico	SD 36	LEE Collier
Jana English	Arkansas	SD 34	Jana English
Andy Thompson	OH	HD 95	Andy Thompson
Julian Zym	KS	SD 9	Julian Zym
James Bettelinger	NV	SD 17	James Bettelinger
Tom BUFORD	KY	S-22	Tom BUFORD
Gary Daniels	NH	Hills 40	Gary Daniels
Bill Brown	OK	SD 36	Bill Brown
Masterson	KS	SD 16	Masterson
Frederick Brown	GA	Dist 115	Frederick Brown
Lewis Moore	OK	96	Lewis Moore
Tom Morrison	IL	54	Tom Morrison
Tyler August	WI	32	Tyler August
Mila Kuylen	LOI	84	Mila Kuylen
Riley L. Loran	VA	62nd	Riley L. Loran
Libby Szabo	CO	27th	Libby Szabo
GARY A. CHISM	MS	37th	GARY A. CHISM
Frank M. Ruff	VA	15th Sen	Frank M. Ruff
W. M. BROWN	TN	61st HD	W. M. BROWN

Name	State	District	Signature
Senator Wayne Niederhouser	Utah	9	Wayne Niederhouser
Senator Stuart Adams	Utah	22	Stuart Adams
Rep. Debbie Lesko	AZ	21	Debbie Lesko
Senator Eugene S. Clarke	MS	22	Eugene S. Clarke
Rep. Herb Emerson	MS	106	Herb Emerson
Jim Brown	MD	41	Jim Brown
Sen. James E. Stock	IN	22	James E. Stock
Rep. John Adams	OH	85	John Adams
(Already signed.)	Alon Smith	OH	
Alon O. Brenner	OH	67	Alon O. Brenner
Rep. Tom Sands	IA	88	Tom Sands
Rep. Jason Spive	NC	97	Jason Spive
Timothy Mah	MI		Timothy Mah
Rep. Jeff Thompson	ID	30	Jeff Thompson
Rep. Richard Carlson	KS	61	Richard Carlson
Ed. Gail Bates	MD	9	Gail Bates
Rep. Chris Kapenga	WI	99	Chris Kapenga
Rep. Hal Wick	S.D.	12	Hal Wick
REP MARVIN KLEEB	KS	48	Marvin Kleeb
Sen. Jim Denning	KS	8	Jim Denning
Sen. Robert Stivers	Ky	25	Robert Stivers
<del>Sen. Robert Stivers</del>	<del>Ky</del>	<del>25</del>	<del>Robert Stivers</del>

Name	State	District	Signature
Ronald Ryckman Sr	Ks	115	Ronald Ryckman
Pita Martinson	MS	58	Pita Martinson
Charles Eazy	TX	83	Clayton
Jim Downing	KS	08	Jim Downing
Bill Hayes	NE	17	Bill Hayes
Bill Hayes	OH	72	Bill Hayes
SENATOR ERNIE HARRIS	KY	26	Ernie Harris
Rep. Ben Koppelman	ND	16	Ben Koppelman
Sen. Chris Shul	MD	2	Chris Shul
Rep. Tom Sands	IA	88	Rep. Tom Sands
Sam Larry Powell	KS	39	Sam Larry Powell
Rep. Steven R Brunk	KS	85	Steven R Brunk
Billie Brunk	KS	85	Billie Brunk
Mike Kowall	Mich	15	Mike Kowall
JEFF MELCHER	KS	11	Jeff Melcher
Charles Melcher	KS	39	Charles Melcher
SEN. WILLIAM PAINTE	NM	20	William Painte
SEN. Tony Smith	MS	47	Tony Smith
Rep. J. C. Clark	KS	69	J. C. Clark
Rep. L. L. L. L. L.	KS	110	L. L. L. L. L.
Rep. Nelson (H. D.)	SC	106	Nelson (H. D.)
Sen. Ed Emery	MD	51	Ed Emery

Name	State	District	Signature
Rep. David Rees	IL	109	
Susan W. Kelsa	MD	9B	Susan W. KREBS
Michael Haugh	MD	3B	Michael H.
Jimmy Eldridge	TN	73	Jim Eldridge
Rep. Pat Marsh	TN	62	Pat Marsh
EDWARD MASSO	NC		Edward Masso
Rep. Damon Lichteniger	MO		Damon Lichteniger
Annette Heide	KS	99	Annette Heide
Gene Whisman	OR	HD53	Gene Whisman
Shirley Upm	DC		Shirley Upm
Jack Papp	KS	9	Jack Papp
Bill Dwyer	TN	13	Bill Dwyer
Henry Krigel	MT		Henry Krigel
Timothy C. Klesco	IN	21	Timothy C. Klesco
Adelaide C. Eckhardt	MD#1		Adelaide C. Eckhardt
Cary Kang	Ky	55	Cary Kang
JERRY LUNN	KS	28	Jerry Lunn
RAY MERRICK	KS	27	Ray Merrick (Speaker)
Rep. Dave Dege	IA	49	Dave Dege
<del>Rep. Ron Amstutz</del>			
Rep. Ron Amstutz	OH	1	Ron Amstutz
Chris Lauzen	Kane County, IL		Chris Lauzen

Name	State	District	Signature
Senator Mark C. Jensen	MI	28	Mark C. Jensen
Senator Steve Martin	VA	11 <sup>th</sup>	Steve Martin
Representative JUNE SAINE	CO	63 <sup>rd</sup>	June Saine
Delegate RICHARD BELL	VA	20 <sup>th</sup>	Richard Bell
Senator Mary Pipher Cook	KS	18	Mary Pipher Cook
Rep Pam Peterson	OK		Pam Peterson
Rep Mark E. Chum	ND		Mark E. Chum
Rep Gerald L. Stober	OH		Gerald L. Stober
Rep Chuck Martin	GA	49	Charles E. Martin
Rep Mike J. Rosen	FL		Mike J. Rosen
Cecilia Howell	Va.	28	Cecilia Howell
Linda Jaxell	ala	94	Linda Jaxell
WAYNE NORMAN	Md	Hof D 35A	Wayne Norman
Kathina Shealy	IE	23 <sup>rd</sup>	Kathina Shealy
Any Dick Kiss My Ass	SF	Antoni	From Arizona
William Lona	VA		William Lona
Yvette Herrell	NM	51	Yvette Herrell
RACON C. WATTS	IA	19	Ralph C. Watts
CAROL MASON	MS	1	CAROL MASON
Dr. Kelli Ward	AZ	CD4	Kelli Ward
Noble Elington	LA.		Noble Elington
Terrence L. Blair	OH	42	TERRENCE L. BLAIR

ATC

Name	State	District	Signature
L. SCOTT LINGAMFELDER	VA	31	
TIM McFITT	NC	116	
<del>AL C. G. S.</del>	OR.	#6	<del>AL C. G. S.</del>
GARY W. BANZ	OKLAHOMA	#101	GARY W. BANZ
MARVIN KLEER	KS	48	
Hal G. Wick	S.D.	12	Hal G. Wick Rep.
Joe Schuertz	Ks	101	
Mark Christensen	NZ	44	Mark Christensen
DAVID A. WOLKINS	IN	18	DAVID A. WOLKINS
BILL CALLEGARI	TX	132	BILL CALLEGARI
W. E. G. M.	IN	41	
Josh Clack	GA	98	Josh Clack
Paul Boyer	AZ	20	Paul Boyer
Kern Kuy	Ky	58	Kern Kuy
Steve Smith	NE	14	Steve Smith
Kelli Slapp	FL	15	Kelli Slapp
Judson Kelle	GA	32	Judson Kelle
SEN. JAMES R. BUCK	IN	81	JAMES R. BUCK
John E. Purcipe	CT	76	John E. Purcipe
SEN. WILLIAM F. BURT	NM	33	WILLIAM F. BURT
Rep. Ken Ivory	UT	47	Ken Ivory
AL C. G. S.	OH	85	AL C. G. S.

Name	State	District	Signature
REP. BLAIR THOMPSON	ND	44	Blair Thompson
SEN. JACOB ANDERSON	CA	36 <sup>TH</sup>	Jacob Anderson
Rep. Garry R. Smith	SC	27	Garry R. Smith
Rep. Mike Jacobs	OK	40	Mike Jacobs
Rep. Harold Wright	OK	57	Harold Wright
<del>SEN. ANDRE E. CUSHNETT</del>	<del>ME</del>	<del>33</del>	<del>Andre E. Cushnet</del>
Paul Farrow	WI	33	Paul Farrow
Rep Jim Stalzer	SD	11	Jim Stalzer
Sen. Stan Cooper	WY	14	Stan Cooper
Rep. Daniel Zwonitzer	WY	43	Dan Zwonitzer
Rep. Bill Kramer	WI	97	Bill Kramer
Rep. Steve McDaniel	TN	72	Steve McDaniel
Rep. Keith Esau	KS	14	Keith Esau
Del. Kathy Byron	VA	22	Kathy Byron
Rep. Rob. Sweeninger	WI	34	Rob. Sweeninger
Rep. Marilyn Avila	NC	40	Marilyn W. Avila
Rep. BILL SANDIFER	SC	2	Bill Sandifer
Senator KENT LAMBERT	CO	9	Kent Lambert
Senator Alan Watermeier	NE	#1	Alan Watermeier
Rep. JASON SAINTE	NC	#97	Jason R. Sainte
DAN LEDERMAN	SD	16	Dan Lederman
RYAN A. MAHER	SD	28	Ryan Maher



Name	State	District	Signature
Barbara R. Sears	OH	47	Barbara R. Sears
Andrew Reynolds	NH	Hills 28	Andrew Reynolds
Bill Kintner	NF	402	Bill Kintner
Charles F. Fite	AK	80	Charles Fite
Lora Reinhold	AK	26	Lora Reinhold
Alan Coen-mora-SC			
Bill Wilson	WA	501	Bill Wilson
<del>Bill Wilson</del>	<del>WA</del>	<del>501</del>	<del>Bill Wilson</del>
Jordan Vlasy	NH	Hills 37	Jordan Vlasy
Kathy Szeliga	MD	7	Kathy Szeliga
Rebecca T. Telford	IN	80	Rebecca Telford
Kid Talbot	LA	78	Kid Talbot
MARK ROMANCHUK	OH	2	Mark Romanchuk
Charlotte Douglas	AR House	# 75	Charlotte Douglas
M. Kirkland Cox	VA. House of Delegates	66th	M. Kirkland Cox
Olga H. H. H.	NC House of Rep	68th	Olga H. H. H.
Kathy Swan	MO House		Kathy Swan
SR Hoell	OH State Rep.	men 23	SR Hoell




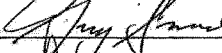
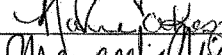
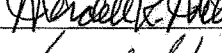


Name	State	District	Signature
Jamok Joshi	Co.	State House Dist. 16	<i>Jamok Joshi</i>
Senator Mary Pitches-Cook	KS	10	<i>Mary Pitches-Cook</i>
Senator Leah Vukmir	WI	5th	<i>Leah Vukmir</i>
Rep. Jimmy Eldridge	TN	73	<i>Jimmy Eldridge</i>
Rep. Dave Henton	TX	84	<i>Dave Henton</i>
Rep. Linda Miller	TX	94	<i>Linda Miller</i>
Rep. Jodie Laubenberg	TX	HD 89	<i>Jodie Laubenberg</i>
Rep. Karen M. Rohr	ND	31	<i>Karen M. Rohr</i>
Sen. Kim Swil	OK	18	<i>Kim Swil</i>
Sen. Rob Sturridge	OK	15	<i>Rob Sturridge</i>
Rep. Pat Ownbey	OK	48	<i>Pat Ownbey</i>
Rep. Pam Peterson	OK	67	<i>Pam Peterson</i>
Sen. Langford	CA		
Rep. Ron Young	OH	61	<i>Ron Young</i>
Andy Thompson	OH	95	<i>Andy Thompson</i>
<del>Rep. [Name]</del>	<del>State</del>	<del>District</del>	<del>Signature</del>
Rep. Charlotte Douglas	AR	75	<i>Charlotte Douglas</i>
Senator Cecile Bledsoe	AR	3	<i>Cecile Bledsoe</i>
Rep. Jim Ditson	AR	93	<i>Jim Ditson</i>

Name	State	District	Signature
Rep. J. K. Kohn	WI.	89	John Kohn
Rep. S. R. Hadd	NH	MEAR 23	S. R. Hadd
Rep. Pat Dumbley	OK	48	Pat Dumbley
Senator J. J. Flecken	Ohio	14	Joseph W. Flecken
Rep. Philip Lorne	SC	140	Philip Lorne
Karen M. Rohu	N.D.	31	Karen M. Rohu
REP. JOHN WOOD	FLA	41	John Wood
Senator Phyllis Niederhouser	Utah		Phyllis Niederhouser
Charles F. Felt	TX	56	Charles F. Felt
John M. Martin	ML		John M. Martin
Victoria McCarter	MD	54	Victoria McCarter
Tom Lockhart	WY		Tom Lockhart
Fred Dyson	ALASKA		Fred Dyson SENATOR
DAVID R. FRIZZELL	Indiana	93	David R. Frizzell
Leta B. Balford	SC	58	Leta B. Balford
KEITH WINE	VA	3 <sup>RD</sup>	Keith Wine
Telly Boone	OH	57	Telly Boone
Rep. Nate Bell	AR	20	Nate Bell

Name	State	District	Signature
CINDY PUGH	MN	33B	CINDYPUGH
Kevin Lundberg	CO	15-S	<del>Kevin Lundberg</del>
Bette Grande	ND	41	Bette Grande
Sue Allen	MO	100	<del>Sue Allen</del>
Johnnie Key	AR	17	<del>Johnnie Key</del>
Edith P. Williams	AR	29	<del>Edith P. Williams</del>
Michl S. Hall	AR	801	<del>Michl S. Hall</del>
Olivia H. Bond	MO	16	<del>Olivia H. Bond</del>
Karl Connors	WY	6	<del>Karl Connors</del>
Ken Bragg	AR	15	<del>Ken Bragg</del>
M			
Del. Hail Byles	MD	9A	<del>Del. Hail Byles</del>
SEN TERRY BROWN	MS	17	<del>SEN TERRY BROWN</del>

Name	State	District	Signature
ALLEN FLETCHER	TEXAS	130	Allen Fletcher
W. STEPHEN ALFORD	KANSAS	124	Stephen Alford
John Cluster	Maryland	8	John Cluser
<del>James Eric Todd</del> James Eric Todd	<del>KANSAS</del>	<del>129</del>	
James Todd	Kansas	129	James Eric Todd
Adam Moore	CA		Adam Moore
Greg Treat	Oklahoma	SD47	Greg Treat
WESTON NEWTON	SC	120	Weston Newton

Name	State	District	Signature
Phil King	TX	61	Phil King
Ellen Savarino	MD	1	Ellen Savarino
WAYNE WALLINGFORD	MO	21	Wayne Wallingford
Jordan G. Uler	NH	Hills 37	Jordan G. Uler
Sen. Terry C. Brown	MS	31	Terry C. Brown
Delegate Kathy Szeliga	MD	7	Kathy Szeliga

Name	State	District	Signature
Rep. PETE DE GRAAF	KS	82	
Rep. Kim Hoggelman	ND	13	
Rep. BILL DENNY	MS	64	
SPEAKER PRO TEMPORE GREG SNOWDEN	MS	83	
Rep. Norma Macoszek	WY	32	
Rep. Wendell Willard	GA	51	
Rep. Sarah Stens	NC	90	
Alan B Smith	OH		

**Signed Electronically:**

	Name	State	District
1.	Rep. Barbara R. Sears – Majority Leader	Ohio	47
2.	Rep. Rick Miller	Texas	26
3.	Assemblyman Jim Wheeler	Nevada	39
4.	Rep. Stanley Cox	Missouri	52
5.	Sen. Eugene S. Clarke	Mississippi	22
6.	Sen. Perry Lee	Mississippi	35
7.	Sen. Chris Shank	Maryland	2
8.	Sen. Giles K. Ward	Mississippi	18
9.	Rep. Daniel Salomon	Montana	12
10.	Rep. Lawrence R. Klemin	North Dakota	47
11.	Sen. Verdell Jackson	Montana	5
12.	Speaker William J. Howell	Virginia	28
13.	Rep. Phil King	Texas	61
14.	Rep. Gerald Stebelton	Ohio	77
15.	Sen. Mary Pilcher-Cook	Kansas	10
16.	Sen. Alan Hays	Florida	11
17.	Rep. Warren Groen	New Hampshire	10
18.	Rep. Joshua G. Evans	Tennessee	66
19.	Rep. Richard Carlson	Kansas	61
20.	Rep. Ron Ryckman Sr.	Kansas	115
21.	Delegate Michael Hough	Maryland	3B
22.	Rep. Terry Rice	Arkansas	21
23.	Sen. Bill Seitz	Ohio	8



24. Sen. Johnny Key	Arkansas	1
25. Sen. Nancy K. Barto	Arizona	15
26. Sen. Tony Smith	Mississippi	47
27. Rep. Ellis Black	Georgia	174
28. Sen. Mitch Holmes	Kansas	33
29. Delegate Gail Bates	Maryland	9A
30. Rep. Michael L. Molgano	Connecticut	144
31. Sen. Mike Padden	Washington	4
32. Sen. Susan Wagle	Kansas	30
33. Rep. Mike Forrester	South Carolina	34
34. Rep. Mike Speedy	Indiana	90
35. Rep. Heath VanNatter	Indiana	38
36. Rep. Eric Koch	Indiana	65
37. Rep. Randy Frye	Indiana	66
38. Rep. Sean Eberhart	Indiana	57
39. Rep. Jerry Torr	Indiana	39
40. Sen. R. Michael Young	Indiana	35
41. Sen. Johnny Nugent	Indiana	43
42. Sen. Brent Steele	Indiana	44
43. Sen. Johnny Nugent	Indiana	43
44. Rep. Mike Sanders	Oklahoma	59
45. Rep. David Derby	Oklahoma	74
46. Rep. John Trebilcock	Oklahoma	98
47. Rep. John Enns	Oklahoma	41
48. Rep. Don Armes	Oklahoma	63

49. Sen. Rob Johnson	Oklahoma	22
50. Rep. Jason Murphey	Oklahoma	31
51. Rep. Steve Martin	Oklahoma	10
52. Rep. Steve Vaughan	Oklahoma	37
53. Sen. Bryce Marlatt	Oklahoma	27
54. Sen. William J. Seitz, III	Ohio	8
55. Rep. Dan Flynn	Texas	2
56. Rep. Rick Gray	Arizona	21
57. Rep. Sondra Erickson	Minnesota	15A
58. Rep. Curry Todd	Tennessee	95
59. Rep. George G. Cleveland	North Carolina	14
60. Rep. Mike Harmon	Kentucky	54
61. Rep. Doug Kary	Montana	48
62. Rep. Brian Ellis	Pennsylvania	11
63. Rep. Paul C. Bandy	New Mexico	3

## AMERICAN LEGISLATIVE EXCHANGE COUNCIL, ARLINGTON, VIRGINIA, STATEMENT

Statement from the American Legislative Exchange Council

The American Legislative Exchange Council focuses on pro-growth, economic issues to increase opportunity for all Americans. The unique public-private partnership provided by the Council expands all members' ability to understand and act upon issues that matter in states around the country.

The American Legislative Exchange Council is America's largest nonpartisan, voluntary membership organization, comprised of nearly one-third of the country's state legislators. The Council provides a unique opportunity for state lawmakers, business leaders and citizen organizations from around the country to share experiences and develop state-based, pro-growth models based on academic research, existing state policy and proven business practices. The Exchange Council is a non-profit, educational policy organization that facilitates substantive, academic discussions.

The American Legislative Exchange Council provides a forum to facilitate the exchange of policy ideas from a variety of perspectives. Model policy and resolutions are developed by organization members and may or may not reflect the positions of any individual member, company, association, or non-profit.

Only elected officials (public-sector members) can introduce policy for discussion and potential adoption as model policy, and only the Board of Directors, comprised solely of elected officials can approve policy for the organization. All adopted model policy merely represents the perspectives of the American Legislative Exchange Council and its members. Policies need to be introduced, reviewed, debated and voted on by elected officials in their respective state legislatures in order for a law to be enacted.

The American Legislative Exchange Council and its nine task forces closely imitate the state legislative process: resolutions are introduced and assigned to an appropriate task force based on subject and scope; meetings are conducted where experts present facts and opinion for discussion, just as they would in committee hearings; these discussions are followed by a vote. All adopted model policies are subject to a five-year review and sunset process, whereby outdated policy is removed and no longer endorsed by the organization.

Council task forces operate with transparency and serve as testing grounds to judge whether resolutions can achieve consensus. To further transparent operations, all adopted model policies are published at [www.alec.org](http://www.alec.org) to promote increased education and the open exchange of ideas across America.

## COALITION LETTER, AUGUST 30, 2013



August 30, 2013

Dear Senator Durbin:

Our Constitution guarantees freedom of speech and assembly, for both individuals and organizations.

Our organizations recently received probing letters from your office — or understand that such letters were sent to a variety of private companies and citizen groups — demanding information about participation in the American Legislative Exchange Council. No existing law requires the disclosure of such information — nor would any such law be constitutional.

The First Amendment guarantees Congress shall make no law abridging the freedom of speech or assembly. The Supreme Court's decision in *NAACP v. Alabama* ensures nonprofit organizations have the right to keep their membership lists private for fear of political intimidation.

While you may disagree with certain model policies adopted by the American Legislative Exchange Council, ALEC's members have the right to free speech and association. To facilitate a candid and open marketplace of ideas, ALEC protects — and will continue to protect — the privacy of its members and those who participate in its meetings.

The questions posed by your letter parallel those asked by the Internal Revenue Service of other citizen groups the IRS deemed as politically conservative. Interrogating such organizations about the names of individual donors, purposes of organizational events, and contents of meetings

violates rights ensured by the Constitution. Pressuring any private organization to answer such questions clearly exceeds your authority as an elected official.

As Chairman of the U.S. Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, it is your responsibility to ensure that government protects the Constitutional rights of all Americans.

Sincerely,

**Dan Greenberg**  
President, Advance Arkansas Institute

**Mario H. Lopez**  
President, Hispanic Leadership Fund

**Phil Kerpen**  
President, American Commitment

**Dennis LaComb**  
Publisher, *Illinois Review*

**Grover Norquist**  
President, Americans for Tax Reform

**Andrew Langer**  
President, Institute for Liberty

**Chuck Muth**  
President, Citizen Outreach

**Joseph G. Lehman**  
President, Mackinac Center for Public Policy

**Congressman Bob Barr**  
Former Congressman (GA-7)

**Andy Matthews**  
President, Nevada Policy Research Institute

**Jason Stverak**  
President, Franklin Center for Government & Public Integrity

**Kevin P. Kane**  
President, Pelican Institute for Public Policy

**George Landrith**  
President, Frontiers of Freedom

**Michael Barnhart**  
Chairman and CEO, State Budget Solutions

**Jeff Ferguson**  
President, The Harbour League

**David Williams**  
President, Taxpayers Protection Alliance

**Joseph Bast**  
President, Heartland Institute

**Berin Szoka**  
President, TechFreedom

**Mr. Terrence Scanlon**  
President, Capital Research Center

CENTER FOR COMPETITIVE POLITICS, ALEXANDRIA, VIRGINIA, DAVID KEATING,  
PRESIDENT, LETTER



September 16, 2013

The Honorable Richard J. Durbin  
Chairman  
Subcommittee on the Constitution, Civil Rights and Human Rights  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Durbin:

On behalf of the Center for Competitive Politics (CCP),<sup>1</sup> I am writing in response to your August 6 letter inquiring as to the Center's involvement with the American Legislative Exchange Council (ALEC) and our position on "stand your ground" laws.

According to news accounts, you have sent similar or identical letters to more than 300 groups and you are quoted in an article as saying, "My concern is with the lack of transparency. As a public official, when I take a position, I stand up to explain and defend it. I file annual financial disclosures, campaign finance reports and have to face the scrutiny of public opinion."

The purpose of disclosure is to allow citizens to monitor government, not to allow government to monitor citizens. We recognize that in practice this distinction can dissolve. For example, if we demand public disclosure of who gave money to a public official, in order to monitor that official, we will necessarily give the government the tools to monitor us. But as a first principle for thinking about what disclosure is proper, it is a good starting point.

"Because members of the Senate want to know" is simply not a valid reason for the government invading an organization's privacy or the privacy of its supporters. "As a public official" is the key phrase in your response. You are a public official. You file financial reports and campaign finance reports because you are a public servant. Citizens do not have to report on their beliefs and activities to the government. The two are not comparable.

<sup>1</sup>The Center for Competitive Politics is a nonpartisan, non-profit 501(c)(3) organization focused on promoting and protecting the First Amendment political rights of speech, assembly, and petition. It is the nation's largest organization dedicated solely to protecting First Amendment political rights. Bradley Smith founded the Center in 2005, after completing his term as Commissioner at the Federal Election Commission (FEC), because it had become clear to him, both as an academic and then in his time as a Commissioner, that the public is greatly misinformed about campaign finance laws and regulations. The Center has worked tirelessly to maintain as broad, nonpartisan approach to issues of campaign finance reform.

For a member of the United States Senate to demand to know if citizens financially support certain private groups and organizations, and what they think of certain laws, with the openly stated intention of publicizing the responses in an official Senate hearing is, we believe, an act of intimidation and an abuse of office.

Your request is made at a time when Americans' confidence in government has been rocked by information that the IRS has targeted groups for their political beliefs. You are one of a number Senators who specifically urged the IRS to investigate conservative non-profit groups. Such pressure on the agency appears to have been a major factor in creating the current IRS scandal, which will have longstanding repercussions for the agency's reputation and the voluntary compliance of citizens with the tax system. Your letter to the IRS Commissioner, which would have been illegal if sent by the president or his staff,<sup>2</sup> demanded an audit of one group.<sup>3</sup> That demand also may violate Senate Rule 43,<sup>4</sup> which governs communications "with an executive or independent government official or agency." That rule does not permit demands of government officials such as that contained in your letter.

The First Amendment grants Americans the right to speak about politics without fear of official retribution from the government or elected officials. Sending letters on official U.S. Senate stationery demanding information about organizations' constitutionally-protected associations and specific political stances, with a clearly implied threat of political retaliation, has a chilling effect on both speech and association. Individuals and businesses may now hesitate to associate with ALEC or other groups for fear of retribution. Of course, this may have been the unstated goal of your letter, which was sent on the eve of ALEC's 2013 Annual Meeting.

These demands are reminiscent of the rejected "DISCLOSE Act," which would have mandated disclosure of donations not related to the election or defeat of political candidates. The bill was about politics and silence as much as "disclosure." As Senator Charles Schumer said when the first bill was introduced, "the deterrent effect [on citizens' speaking out] should not be underestimated." It appears the ultimate aim of such proposals is to force trade associations and non-profits to publicly list all their members along with their dues and contributions. Such lists can be used by competing groups to poach members and, more ominously, to gin up boycotts and threats to the individuals and corporate members of the groups—indeed, this is already being done. Further in the background lies the thinly veiled threat of official government retaliation.

The desire to preserve privacy stems from a growing awareness by individuals and the Supreme Court that threats and intimidation of individuals because of their political views is a very serious issue. As the Supreme Court has stated, "it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action" (*NAACP v. Ala. ex rel. Patterson*, 357 U.S. at 462). By questioning every organization that has associated with an organization whose views you seem to dislike, you have, we hope unintentionally, engaged in the sort of subtle intimidation that the Court has warned is so dangerous and pernicious.

<sup>2</sup> 26 USC § 7217

<sup>3</sup> <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=833d8f1e-bbdb-4a5b-93ec-706f0cb9cb99>

<sup>4</sup> [http://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=efa7bf74-4a50-46a5-bb6f-b8d26b9755bf](http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=efa7bf74-4a50-46a5-bb6f-b8d26b9755bf)

This is a powerful reminder that transparency and disclosure can be abused by government and government officials. At its best, transparency allows citizens to monitor the activities of their government and elected officials. Demanding to know with whom Americans associate and what causes they support, under the not so subtly implied threat to use the power of government to attempt to embarrass them, or more, is to do precisely the opposite. It seeks to use the power of government to monitor the activities of its citizens, with the apparent purpose of directly pressuring speakers to shut up, or providing political allies with weapons to use against common political opponents.

We strongly encourage you to reconsider your approach out of simple respect for your fellow citizens and the First Amendment. Otherwise, we fear that such activity will not only become more pervasive, but will also tarnish your legacy and forever be enshrined in political lexicon as Durbinism. Americans engaged in political or advocacy activities should not have to wonder if they might be hauled up to a future hearing of a Senate committee to be publicly grilled on their views and support for certain organizations or beliefs.

With the foregoing in mind, we answer your letter voluntarily and it should not be presumed that we will respond to future such requests, which we deem inappropriate.

As a non-partisan, tax exempt 501(c)(3) organization, the Center for Competitive Politics does not engage in electoral advocacy and is strictly limited in the de minimis amount of lobbying it may conduct pursuant to IRS rules. CCP has provided its expertise to numerous government agencies and private organizations seeking to improve the electoral and campaign finance systems. CCP is not a member of ALEC and has not provided funding to ALEC in 2013. In fulfillment of our mission, representatives of CCP previously served on ALEC's Election Law task force, which was disbanded in 2011. CCP also has worked with the National Conference of State Legislatures, providing speakers at that organization's last two annual meetings, and provided expert testimony and analysis to numerous congressional committees and state legislative bodies. As an organization whose mission is to promote and defend the First Amendment's rights to free political speech, assembly, and petition, CCP takes no position on "stand your ground" laws. However, we strongly believe that persons have a right to advocate for or against "stand your ground" laws without being subjected to intimidating letters from members of the U.S. Senate.

We ask that, as promised in your letter requesting this information, you include this response in the record of the Committee hearing.

Very Truly,



David Keating  
President



<sup>3</sup> John K. Roman, Ph.D., *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute (July 2013).

The Honorable Richard Durbin  
Page 2

Since Florida became the first state to pass "stand your ground" legislation in 2005, half the states have adopted similar measures, and my constituents have shared with me their grave concerns about the safety of their families and friends who live in and travel to these states. As the guarantor and protector of civil rights, I believe Congress can and must explore the disparate and dangerous outcomes that can arise from the expansion of these laws. Your hearing will be a constructive and much-needed step toward this goal.

Thank you for your leadership, and I look forward to working together on this important issue.

Sincerely,

A handwritten signature in black ink, reading "Elijah E. Cummings". The signature is stylized with a large, bold "E" and a long, sweeping underline that extends to the right.

Elijah E. Cummings  
Ranking Member

AMERICAN ACADEMY OF PEDIATRICS, WASHINGTON, DC, SEPTEMBER 17, 2013,  
STATEMENT

American Academy  
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

Tuesday, September 17, 2013

Testimony for the Record

On behalf of the  
**American Academy of Pediatrics**

**Senate Judiciary Subcommittee on the Constitution, Civil Rights and  
Human Rights:**

**"Stand Your Ground" Laws"**

The American Academy of Pediatrics (AAP), a non-profit professional organization of more than 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults, is grateful for the opportunity to provide input on the public health threat of gun violence and its impact on children.

The AAP is committed to protecting children from the horrific consequences of gun violence and traumatic events, and ensuring children's safety within their homes, schools and communities. The scourge of gun violence is a phenomenon that our nation's children experience every single day. In 2008 and 2009, 5,740 children were killed by guns, meaning that 55 died each week during that period<sup>1</sup>. Gun violence has varied and complex causes, but we must act to develop a comprehensive response centered on the rights of children and their families to be safe and free from its harmful effects. Central to doing so at the federal level will be recognition of gun violence as a public health issue and pursuit of evidence-based policies to protect children and families from gun violence.

The AAP urges Congress to find a way forward in enacting common-sense measures to strengthen gun laws and make children safer. The AAP supports the enactment of legislation to strengthen background checks and opposes efforts to force states to recognize out-of-state concealed carry permits. Stronger gun laws will improve public health interventions to prevent gun violence, and federal policy should aim to prevent violence and reduce factors that encourage it.

#### **Gun Violence is a Public Health Issue**

Gun violence is a public health issue with particularly pernicious effects on children. Firearm related deaths continue to be one of the top three causes of death among American youth, causing twice as many deaths as cancer, five times as many as heart disease, and 15 times as many as infections<sup>2</sup>. In 2009, 84.5 percent of all homicides of people 15 to 19 years of age were firearm-related. The United States has the highest rates of firearm-related death (including homicide, suicide and unintentional deaths) among high income countries. For youth ages 15 to 24 years of age, firearm homicide rates were 35.7 times higher than in other high income countries<sup>3</sup>. For over 20 years, the AAP has supported stronger gun violence prevention policies because of the public health implications of this problem. Reducing its impact must be consistent with other initiatives that have reduced injury and mortality through evidence-based prevention efforts.

Policy of the AAP, based on extensive research, is that absence of guns from children's homes and communities is the most reliable and effective measure to prevent firearm-related injuries in children and adolescents<sup>4</sup>. Access to a firearm increases the risk of unintended injury or death among all children. A gun stored in the home is associated with a threefold increase in the risk of homicide and a fivefold increase in the risk of suicide. Individuals possessing a firearm are more than four times more likely to be shot during an assault than those who do not own one<sup>5</sup>. The association of a gun in the home and increased risk of suicide among adolescents is well-documented, even among teens with no

underlying psychiatric diagnosis. These health risks associated with gun violence point toward the need for long term research investments on effective strategies to protect children and adolescents, particularly those within at-risk communities.

#### **Federal Gun Violence Public Health Research Investments Are Critical**

The dearth of gun violence research has contributed to the lack of meaningful progress in reducing firearm injuries. The U.S. has one of the highest rates of injuries, suicides and homicides among developed countries. While the rate of gun-related deaths is down from a high of 15 per 100,000 in the mid-1990s, it has subsequently plateaued since 2000 at 10 per 100,000 and has remained steady<sup>6</sup>. Furthermore, it is estimated that the national rate of gun deaths will surpass the rate of motor vehicle accident-related deaths within the next two years<sup>7</sup>. In several states, such as Arizona, Colorado, Michigan, Nevada, Pennsylvania, and Oregon, the rate of gun deaths has already met or exceeded traffic-related deaths<sup>8</sup>. This is significant because motor vehicle accidents are one of the top two leading causes of unintentional injury deaths, which is the number one cause of death among individuals younger than 45<sup>9</sup>.

Research can contribute to fewer lives lost, reductions in injuries and changes in social norms. Federal infrastructures already exist to establish prevention and harm reduction strategies. Since the 1950s, a research-based public health approach has translated extensive research into prevention and systems change and contributed to an 80 percent reduction in motor vehicle fatalities per mile driven<sup>10</sup>. Significant research investments could address these issues by helping provide a more accurate understanding of the problems associated with gun violence and to determine how best to reduce the high rate of firearm-related deaths and injuries. Unfortunately, in 1996 Congress eliminated funding for CDC research on gun violence and accompanied the cut with language barring any research that would "advocate or promote gun control." The research limitations have also drastically limited the workforce of researchers dedicated to gun violence prevention. It is estimated that fewer than 20 academics in the U.S. currently focus on gun violence<sup>11</sup>.

The AAP strongly supports the Senate Appropriations Committee's inclusion of \$10 million for the Centers for Disease Control and Prevention to conduct gun violence research and a total of \$18.5 million to expand the National Violent Death Reporting System in its FY 2014 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill. AAP urges Congress to approve this funding to improve public health research and surveillance efforts to reduce gun violence and determine what policies and interventions are most effective.

#### **Strong Gun Laws are More Protective of Public Health**

According to a recent analysis by the Violence Policy Center (VPC), the five states (Alabama, Alaska, Louisiana, Montana, and Wyoming) with the least restrictive gun laws and high gun ownership rates also had the highest per capita gun death rates. States with strong gun laws and low rates of gun ownership had far lower rates of firearm-related death<sup>12</sup>. The Law Center to Prevent Gun Violence has also reviewed state gun laws, finding that many of

the states with the strongest gun laws had the lowest firearm-related death rates, while many of the states with the weakest gun laws had the highest firearm-related death rates<sup>13</sup>.

Federal policies must protect children and their communities from gun violence. Research has demonstrated that access to firearms results in a direct increase in conflict-related deaths and injuries, and also increases the risk of serious unintentional injury and death. Adolescents are at particular developmental risk, as this period is marked by a search for identity and independence, accompanied with emotional characteristics including curiosity, strong peer influences, immaturity, and mood swings. Each of these ordinary developmental stages and experiences put young people at a greater risk for impulsive and sometimes violent action, particularly for adolescents with a history of aggressive and violent behaviors, suicide attempts, or depression. Limiting access to and the prevalence of firearms can help protect young people from harming each other or themselves. For these reasons, AAP has strongly supported strengthening background checks and opposed concealed firearm carry reciprocity. Placing more firearms in our communities with fewer restrictions on who can possess them will serve only to catalyze and expand the scope of gun violence.

Thank you again for the opportunity to provide testimony for the record on the important issue of gun violence. The American Academy of Pediatrics stands ready to assist you in addressing this public health issue to protect children from the detrimental effects of gun violence.

<sup>1</sup> Children's Defense Fund. *Protect Children Not Guns 2012*. March 2012. (<http://www.childrendefense.org/child-research-data-publications/data/protect-children-not-guns-2012.pdf>)

<sup>2</sup> WISQARS (Web-based Injury Statistics Query and Reporting System). Atlanta: Centers for Disease Control and Prevention ([www.cdc.gov/ncipc/wisqars](http://www.cdc.gov/ncipc/wisqars)).

<sup>3</sup> American Academy of Pediatrics, Council on Injury, Violence, and Poison Prevention Executive Committee. *Firearm-related injuries affecting the Pediatric Population*. *Pediatrics* 2012;130(5):e1416-e1423.

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> Wadman, Meredith. *The Gun Fighter*. *Nature*. Vol. 496. April 25, 2013.

<sup>7</sup> Christoff, Chris and Kolet, Ilan. American Gun Deaths to Exceed Traffic Fatalities by 2015. Bloomberg Government. December 19, 2012. (<http://www.bloomberg.com/news/2012-12-19/american-gun-deaths-to-exceed-traffic-fatalities-by-2015.html>)

<sup>8</sup> USA Today, Death rates from guns, traffic accidents converging, January 9, 2013, accessed online at <http://www.usatoday.com/story/news/nation/2013/01/09/guns-traffic-deaths-rates/1784595/>

<sup>9</sup> WISQARS (Web-based Injury Statistics Query and Reporting System). Atlanta: Centers for Disease Control and Prevention ([www.cdc.gov/ncipc/wisqars](http://www.cdc.gov/ncipc/wisqars)).

<sup>10</sup> Hemenway, David and Miller, Matthew. *Public Health Approach to the Prevention of Gun Violence*. *New England Journal of Medicine*. May 23, 2013. 368; 21.

<sup>11</sup> Wadman, Meredith. *The Gun Fighter*. *Nature*. Vol. 496. April 25, 2013.

<sup>12</sup> Violence Policy Center, States with Higher Gun ownership and Weak Laws Lead nation in gun deaths, February 7, 2013, (<http://www.vpc.org/press/1302gundeath.htm>)

<sup>13</sup> Law Center to Prevent Gun Violence. Gun Laws Matter. November 14, 2012. (<http://smartgunlaws.org/gun-laws-matter-2012-understanding-the-link-between-weak-laws-and-gun-violence/>)

AMERICAN CIVIL LIBERTIES UNION (ACLU), WASHINGTON, DC, SEPTEMBER 17, 2013,  
STATEMENT



Written Statement of the American Civil Liberties Union

Laura W. Murphy  
Director, ACLU Washington Legislative Office

Jennifer R. Bellamy  
Legislative Counsel, ACLU Washington Legislative Office

Submitted to the U.S. Senate  
Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on:  
*"Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of  
Deadly Force*

Tuesday, September 17, 2013

The American Civil Liberties Union (ACLU) is a non-partisan advocacy organization with over a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of equality and justice set forth in the U. S. Constitution and in our laws protecting individual rights. We appreciate the opportunity to submit testimony regarding “Stand Your Ground” (SYG) laws, which give an individual the right to use deadly force to defend themselves without a duty to retreat from a dangerous situation if the individual believes force is necessary to prevent death or serious bodily injury or prevent a forcible felony. The ACLU has encouraged its affiliates in states with SYG laws to support their repeal because SYG laws encourage vigilante justice and exacerbate racial disparities in the criminal justice system.

*Proliferation of SYG laws*

Since 2005 a number of states have enacted SYG laws. States allowing the use of deadly force in self-defense with no duty to retreat in locations where a person may legally be include: Alabama,<sup>1</sup> Arizona,<sup>2</sup> Florida,<sup>3</sup> Georgia,<sup>4</sup> Illinois,<sup>5</sup> Indiana,<sup>6</sup> Kansas,<sup>7</sup> Kentucky,<sup>8</sup> Louisiana,<sup>9</sup> Michigan,<sup>10</sup> Mississippi,<sup>11</sup> Montana,<sup>12</sup> Nevada,<sup>13</sup> New Hampshire,<sup>14</sup> North Carolina,<sup>15</sup> Oklahoma,<sup>16</sup> Oregon,<sup>17</sup> South Carolina,<sup>18</sup> South Dakota,<sup>19</sup> Tennessee,<sup>20</sup> Texas,<sup>21</sup> Utah,<sup>22</sup> Washington,<sup>23</sup> and West Virginia.<sup>24</sup>

<sup>1</sup> Ala. Code § 13A-3-23.

<sup>2</sup> Ariz. Rev. Stat. §§ 13-404, 13-405, 13-413.

<sup>3</sup> Fla. Stat. Ann. §§ 776.012, 776.013, 776.032.

<sup>4</sup> Ga. Code Ann. §§ 16-3-21, 16-3-23.1, 16-3-24.2.

<sup>5</sup> 720 Ill. Comp. Stat. 5/7-1; *see also In re T.W.*, 888 N.E.2d 148, 157 (Ill. App. 2008) (stating “a person who is not the initial aggressor has no duty to retreat.”); *Illinois v. White*, 638 N.E.2d 314, 320 (Ill. App. 1994) (stating “[w]e agree with the defendant that it has long been the law in Illinois that a person who is not the initial aggressor has no duty to retreat.”).

<sup>6</sup> Ind. Code § 35-41-3-2.

<sup>7</sup> Kan. Stat. Ann. §§ 21-5230, 21-5222, 21-5224, 21-5230, 21-5231.

<sup>8</sup> Ken. Rev. Stat. Ann. §§ 503.050, 503.085.

<sup>9</sup> La. Rev. Stat. §§ 19, 20.

<sup>10</sup> Mich. Comp. Laws §§ 780.972, 780.951, 600.2922b.

<sup>11</sup> Miss. Code Ann. § 97-3-15.

<sup>12</sup> Mont. Code Ann. §§ 49-1-103, 45-3-102, 45-2-103, 45-3-104, 45-3-110.

<sup>13</sup> Nev. Rev. Stat. § 200.120.

<sup>14</sup> N.H. Rev. Stat. § 627:4.

<sup>15</sup> N.C. Gen. Stat. § 14-51.2.

<sup>16</sup> Okla. Stat. tit. 21, § 1289.25.

<sup>17</sup> Or. Rev. Stat. §§ 161.209, 161.219; *see also State v. Sandoval*, 342 Or. 506, 513-14 (2007) (interpreting Or. Rev. Stat. 161.219 to lack a duty to retreat).

<sup>18</sup> S.C. Ann. § 16-11-440.

<sup>19</sup> S.D. Codified Laws §§ 22-5-9, 22, 16-34, 22-18-4.

<sup>20</sup> Tenn. Code Ann. § 39-11-611.

<sup>21</sup> Tex. Penal Code Ann. § 9.32.

<sup>22</sup> Utah Code Ann. 76-2-402.

<sup>23</sup> Wash. Rev. Code §§ 9A.16.020, 9A.16.030; *see also Washington v. Redmond*, 78 P.3d 1001, 1003 (Wash. 2003) (holding “[t]he law is well settled that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be.”); *Washington v. Studd*, 973 P.2d 1049, 1056 (1999) (stating “[w]e have previously held that



Nine states have some limited form of SYG laws or case law that extends stand your ground principles to specific locations outside the home, such as a vehicle or place of business or employment. These laws are not as broad as the traditional SYG laws because they do not reach to all places a person may legally be. The states with these limited laws are Alaska,<sup>25</sup> Connecticut,<sup>26</sup> Hawaii,<sup>27</sup> Iowa,<sup>28</sup> Missouri,<sup>29</sup> North Dakota,<sup>30</sup> Ohio,<sup>31</sup> Pennsylvania,<sup>32</sup> and Wisconsin.<sup>33</sup>

Prior to 2005, when SYG laws began to sweep the country, most states required an individual facing a threat to retreat before using deadly force. This position—requiring retreat before the use of deadly force—was embraced by the Model Penal Code (MPC) in 1962.<sup>34</sup> While the MPC was influential in shaping state penal codes, the rise of SYG laws since 2005 has altered the legal landscape. Now, given the prevalence of SYG laws and limited SYG laws, the majority of states have rejected the duty to retreat prior to using deadly force and allow for the use of lethal force to prevent any forcible felony. SYG laws frequently provide criminal and civil immunity for the use of force, and presume that a person has a reasonable fear of imminent death or great bodily harm when using defensive force in a dwelling, residence, or occupied vehicle.

*SYG laws raise significant civil liberties concerns*

The most serious deprivation of liberty that a person can inflict is killing another individual. The irreversibility of a homicide means that error discovered after a death has occurred cannot be corrected. By increasing the circumstances in which private individuals may use lethal force without fear of legal consequences, SYG laws increase the number of people who are killed without due process of law. For example, since the passage of Florida's SYG law in 2005, the number of justifiable homicides has tripled, according to Florida Department of Law

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no duty to retreat exists when one is feloniously assaulted in a place where one has a right to be.") (internal quotations and citation omitted).

<sup>24</sup> W. Va. Code § 55-7-22.

<sup>25</sup> Alaska Stat. §§ 11.81.335, 09.65.330.

<sup>26</sup> Conn. Gen. Stat. § 53a-19.

<sup>27</sup> Haw. Rev. Stat. Ann. § 703-304.

<sup>28</sup> Iowa Code Ann. §§ 704.1, 704.3; *see also State v. Marin*, 776 N.W. 2d 111 (Iowa App. 2009) (finding that case law has expanded the scope of the castle doctrine in Iowa to reach "a man's home, his office, or place or business and the property owned or lawfully occupied by him"); *State v. Parker*, 261 Iowa 88, 98 (1967) (law imposes a duty to retreat "so far as he reasonably and safely can," not the traditional duty to "retreat to the wall").

<sup>29</sup> Mo. Rev. Stat. § 563.031.

<sup>30</sup> N.D. Cent. Code § 12.1-05-07.

<sup>31</sup> Oh. Rev. Code Ann. §§ 2901.05, 2901.09, 2307.601.

<sup>32</sup> 18 Pa. Cons. Stat. § 505; 42 Pa. Cons. Stat. § 8340.2.

<sup>33</sup> Erica Goode, *NRA's Influence Seen in Expansion of Self-Defense Laws*, N.Y. TIMES, Apr. 12, 2012 (describing enactment of such law in Wisconsin in December 2011).

<sup>34</sup> *See* Model Penal Code §3.04 (ALI 1985). The version of the MPC published in 1985 is the complete text of the Code as adopted by the American Law Institute (ALI) on May 24, 1962. (Since its adoption in 1962, the Model Penal Code (MPC) has imposed a general duty to retreat before deadly force can be employed in self-defense. The only exceptions to this rule are when an individual is in her home or workplace). *See also Id.* §3.04(h).

Enforcement data.<sup>35</sup> In the five years before the law's passage, Florida prosecutors declared "justifiable" an average of 12 killings by private citizens each year. In the five years after the law passed, that number spiked to an average of 36 justifiable killings per year.<sup>36</sup>

FBI statistics confirm similar increases in a number of other states with SYG laws.<sup>37</sup> Prior to the passage of Georgia's SYG law, prosecutors found "justifiable" an average of 7 killings by private citizens each year; since the law was passed, the average number is 14 killings a year.<sup>38</sup> In Texas, the average was 26 "justifiable" killings a year; now the number averages 45 a year.<sup>39</sup> But the rise in justifiable homicides is not universal. Five of the states that enacted SYG laws—Alabama, Kansas, Mississippi, Montana, and West Virginia—reported no significant change in the number of justifiable homicides from 2000 to 2010.<sup>40</sup> In Michigan, which passed its SYG law in 2006, the number fell.<sup>41</sup>

According to an analysis by the *Guardian* of FBI and other data, the rising number of justifiable civilian homicides across the United States is most closely linked to states with both weak gun control laws (as defined by the Brady Campaign Against Gun Violence) and SYG laws.<sup>42</sup> Overall, there has been a 25 percent increase in justifiable civilian killings since 2005, when SYG laws began to sweep the nation.<sup>43</sup>

SYG laws also run afoul of international standards protecting the right to life and against non-discrimination and undermine United States human rights obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the U.S. in 1994.

#### SYG laws exacerbate racial disparities

We should not tolerate a system that treats people unfairly because of the color of their skin. Yet, research shows that SYG laws exacerbate existing racial disparities in the criminal justice system. An Urban Institute study examining data from the Federal Bureau of Investigations Supplementary Homicide Report found that juries are more likely to find that a

<sup>35</sup> Fisher & Eggen, *supra* note 6.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; Bloomberg: Stand Your Ground Has Made America Less Safe (MSNBC television broadcast, Apr. 11, 2012).

<sup>38</sup> Bloomberg, *supra* note 98.

<sup>39</sup> *Id.*

<sup>40</sup> Palazzolo & Barry, *supra* note 2.

<sup>41</sup> *Id.*

<sup>42</sup> Henry Enten, et. al., 'Justified' homicides up 25 percent since states passed Stand Your Ground Laws, THE GUARDIAN (Apr. 5, 2012).

<sup>43</sup> *Id.*

killing was justified when the shooter is white and the victim black. Conversely, when the victim was white and the shooter was not, the shooter is more likely to face legal consequences.<sup>44</sup>

This disparity is detailed in a blog post that cites to an Urban Institute report by the same author, John Roman, published in July 2013, which concludes:

“According to a statistical analysis of homicides drawn from the Supplemental Homicide Reports between the years of 2005 and 2010, cases involving a white shooter and a white victim are ruled justifiable less than 2 percent of the time. If the shooter is black and the victim white, the rate of justifiable cases falls to below 1 percent. If, however, the shooter is white and the victim is black, the shootings are deemed justifiable 9.5 percent of the cases in non-Stand Your Ground states. In Stand Your Ground states, that rate jumps to about 17 percent. Now take a situation similar to the Zimmerman case, which involves a homicide between a shooter and victim, neither being law enforcement, both men, and a firearm used to kill. A little less than 3 percent of black shooter and white victim homicides are deemed justifiable, while white shooter and black victim homicides are ruled to be justifiable about 29 percent in non-Stand Your Ground States and almost 36 percent in Stand Your Ground states.”<sup>45</sup>

#### Conclusion

The ACLU opposes SYG laws because they raise serious civil liberties and racial justice concerns. SYG laws expand the circumstances in which the state authorizes one person to kill another without any semblance of due process. Also, they exacerbate an existing racial disparity in the success rate of justifiable homicide as a defense whereby a killing is more likely to be deemed “justifiable” if the victim is black and the shooter is not than when the races of the victim and shooter are reversed.

As Attorney General Eric Holder said during his remarks to the NAACP annual conference this year, laws like “Stand Your Ground” undermine innocent Americans’ safety “by allowing - and perhaps encouraging - violent situations to escalate in public.”<sup>46</sup> Consistent with common law principles and state statutes nationwide, Americans already have the right to defend themselves with commensurate force in situations where they face imminent harm and safe retreat is not an option. SYG laws – or Shoot First or Kill at Will laws – have nothing to do with legitimate self-defense, but instead are invitations for vigilantes to use deadly and unnecessary force.

<sup>44</sup> John Roman, Ph.D., *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute, 6-10 (2013).

<sup>45</sup> *Id.*

<sup>46</sup> Lindsey Boerma, *Holder: ‘Stand Your Ground’ allows, encourages escalating violence*, CBS News, Sept. 15, 2013.

AMNESTY INTERNATIONAL USA, LONDON, ENGLAND, UNITED KINGDOM, STEVEN W.  
HAWKINS, EXECUTIVE DIRECTOR, STATEMENT

STATEMENT OF

STEVEN W. HAWKINS, EXECUTIVE DIRECTOR

AMNESTY INTERNATIONAL USA

“‘STAND YOUR GROUND’ LAWS: CIVIL RIGHTS AND PUBLIC SAFETY  
IMPLICATIONS OF THE EXPANDED USE OF DEADLY FORCE”

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

OCTOBER 29, 2013

Chairman Durbin, Ranking Member Cruz and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Amnesty International USA regarding today's hearing on Stand-Your-Ground Laws. Stand-Your-Ground laws raise serious concerns about the protection of the most fundamental human rights: the right to life and the right not to be subjected to discrimination on any grounds.

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

We thank you for holding this critical and timely hearing on “Stand Your Ground” Laws which have proliferated among states in recent years. Under such laws in Florida and other states, a private citizen is allowed to use deadly force against a perceived imminent threat of death or bodily harm in any place where he or she has a right to be, without an obligation to retreat. The law in effect presumes the individual is acting in self-defense unless there is specific evidence to the contrary and the burden is on police and prosecutors to prove that the individual did not act in self-defense.

It is a fundamental rule of international human rights law that no one may be arbitrarily deprived of his or her life. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), for instance, provides as follows:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

This is a provision of international human rights law that can never be suspended or attenuated.

In general, the use of lethal force is lawful only if, at the time of its use, it is "strictly unavoidable" in order to meet an "imminent threat of death" in self-defense or defense of others.

‘Imminence’ is a concept that has been defined in international law as being highly limited - a response to an offensive act already in motion. While these standards were developed for law enforcement officials, Amnesty International believes that they provide useful guidance for the state in determining what force is acceptable from private individuals who are in effect taking the law into their own hands.

While everyone has the right to self-defense, Amnesty International is alarmed by mounting evidence suggesting that stand-your-ground laws may encourage the use of deadly force in situations where this is not warranted, for example where such force is not used as a last resort. In such cases, stand-your-ground laws allow private individuals to be held to a lower standard on the use of deadly force than even law enforcement officers, perverting the concept of self-defense, and protecting aggressors rather than the victims of violence. The ultimate result of this could be *more* rather than less violence.

Already in Florida researchers have found that “justifiable homicides” have tripled since the law was introduced in 2005<sup>i</sup>. A 2012 study by the National Bureau of Economic research also found an increase in firearms-related homicides in states which had introduced similar bills.<sup>ii</sup> A 2012 study by Texas A&M University of 23 states with stand-your-ground laws found that homicide rates increase by 7-9 per cent in those states as compared to states without such laws, leading to anywhere from 500 to 700 more homicides every year.<sup>iii</sup>

Furthermore, researchers are finding data suggesting that stand-your-ground laws may legitimize racial bias in the criminal justice systems of the states where they are enacted. For instance, according to a recent study of criminal justice data from 22 states with stand-your-ground laws, white homicide defendants with black victims were more likely to have their homicides ruled justified than black defendants whose victims were white: the shooting of a black person by a white person was found justifiable 17 percent of the time, while the shooting of a white person by a black person was deemed justifiable just over 1 percent of the time. *This disparity was significantly greater than in states without stand-your-ground laws*, where white-on-black

shootings were found justified just over 9 percent of the time.<sup>iv</sup> Given the persistent concerns about racism and racial profiling within law enforcement agencies and in the wider community – so tragically highlighted in the Trayvon Martin case – we need stronger measures to address this issue, not laws that may actually increase racial disparities in the way our justice system is applied and serve to sanction the use of deadly force based on a perceived offender's race or color.

The right to be free from discrimination is a universally recognized human right. It is enshrined in multiple human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, and the International Convention on the Elimination of All forms of Racial Discrimination. These international treaties provide a legal framework that ensures that individuals have the right to be free from discrimination on the basis of: sex, race, color, language, religion, political or other opinion, nationality, social background and association with a national minority, age, economic position, marital, birth or any other kind of status.

#### Recommendations

Amnesty International welcomes Attorney General Holder's investigation of the Trayvon Martin case. We hope he will reach a judgment on whether Florida's stand-your-ground law played any part in the case and the outcome of the Zimmerman trial. But the investigation into the Trayvon Martin case is not sufficient. Amnesty International believes the Attorney General should lead a much more comprehensive nationwide study, examining all states where stand-your-ground laws

are in place to determine the following: whether the laws have led to an increase in gun homicides; whether the laws and the broadening of the concept of self-defense violate the right to life; and whether they violate the right to be free from discrimination. The Department of Justice should publicly disclose the findings of its study and ensure that any recommendations made are with a view to bringing current legislation into compliance with international human rights law and standards.

Amnesty International also calls on state legislatures to repeal stand-your-ground laws on the basis that these laws may violate the right to life and the right to be free from discrimination, and run afoul of international standards on the use of lethal force, which can only be effective in advancing public safety and protecting human rights if they are applicable to both state and non-state actors. The early data already demonstrates that stand-your-ground laws may violate not only the right to life but also the right to be free from discrimination. Given the mounting evidence that these laws may violate such basic human rights, in breach of the United States' obligations under international law, Amnesty International believes all stand-your-ground laws should be repealed.

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<sup>1</sup> Fisher, Marc and Dan Eggan, *Stand Your Ground Laws Coincide With Jump in Justifiable Homicide Cases*, Washington Post, 7 April 2012, available at [http://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/gIQA52v51S\\_print.html](http://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/gIQA52v51S_print.html).

<sup>2</sup> McClellan, Chandler and Erdal Tekin, "Stand Your Ground Laws and Homicides", National Bureau of Economics, July 2012, publicly available at <http://ftp.iza.org/dp6705.pdf>.

<sup>3</sup> Cheng, Cheng, and Mark Hoekstra, "Does Strengthening self-defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine", Texas A&M University Journal of Human Resources, 2012, publicly available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

<sup>4</sup> Roman, John K., "Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide report Data", Urban Institute, July 2013, available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.



ALABAMA POLICY INSTITUTE, BIRMINGHAM, ALABAMA, GARY PALMER, PRESIDENT,  
AUGUST 21, 2013 STATEMENT



August 21, 2013

The Honorable Richard J. Durbin  
Chairman, Subcommittee on the Constitution, Civil Rights and Human Rights  
Committee on the Judiciary  
United States Senate  
711 Hart Senate Building  
Washington, D.C. 20510

Dear Senator Durbin,

The Alabama Policy Institute received your letter dated August 6<sup>th</sup> in which you inquire about our relationship with the American Legislative Exchange Council (ALEC) and ask whether or not our organization supports "stand your ground" legislation. While answering the letter is voluntary, the letter fails to mention that fact and could be construed by some of its more than 300 recipients as mandatory. Nevertheless, the Alabama Policy Institute appreciates the opportunity to respond.

The protection and preservation of the principles and rights embodied in the U.S. and Alabama Constitutions are the bedrock of the Alabama Policy Institute's mission. As Chairman of the Subcommittee on the Constitution, Civil Rights and Human Rights, you are probably aware that your request comes dangerously close to violating the freedom of association guaranteed by the United States Constitution. In 1958, the U.S. Supreme Court recognized "the vital relationship between freedom to associate and privacy in one's associations" and addressed behavior of this very sort, stating that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association. . . ." The Alabama Policy Institute values the right to free association and the constitutional protections of this right from harassment or intimidation.

With respect to "stand your ground" legislation, Alabama law protects the right of an individual to use deadly force in self-defense or in defense of another without a duty to retreat when the individual is not engaged in unlawful activity and is in a place where he or she has the right to be.<sup>a</sup>

The U.S. Supreme Court has deemed "the inherent right of self-defense" as "central to the Second Amendment right [to bear arms]."<sup>b</sup> The Alabama Policy Institute has and will continue to support state laws designed to safeguard this constitutional right.

Your letter states your intent to hold a hearing of the Senate Judiciary Committee to examine "stand your ground" laws. Self-defense laws, including the "stand your ground" laws found on the books of twenty-two states,<sup>c</sup> are a matter of exclusive state authority under the Tenth Amendment. The Alabama Policy Institute is prepared to defend the laws of our state from any unconstitutional federal intrusion contemplated by or resulting from such a hearing.

In conclusion, we recognize the importance of a robust public dialogue over important issues facing our nation. The Alabama Policy Institute welcomes a good-faith interest in our efforts to support free markets, return to a government limited by the Constitution, and promote strong families. On the other hand, requesting “yes or no” responses based on our affiliation with another organization and their positions can only be seen as a coercive attempt to use the official hearing record as a means to deter us from engaging in such an association or holding such a policy position.

The Alabama Policy Institute disagrees with many of your positions, but we recognize your constitutionally-protected right to hold those views and associate with those who agree with them. Your letter suggests that you do not regard these rights as sacrosanct and equally applicable to all parties. Regardless, the Alabama Policy Institute will continue to promote and defend our nation’s founding principles against those who view our Constitutional freedoms as a hindrance to their agendas.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Palmer", with a long horizontal flourish extending to the right.

Gary Palmer  
President, Alabama Policy Institute

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<sup>1</sup> NAACP v. Alabama, 357 U.S. 449, 462 (1958).

<sup>2</sup> Ala. Code § 13A-3-23 (2006).

<sup>3</sup> District of Columbia v. Heller, 554 U.S. 570, 628-30 (2008).

<sup>4</sup> NAT'L CONF. STATE LEGISLATURES, SELF DEFENSE AND "STAND YOUR GROUND" (2013), <http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx>.

AMERICAN NURSES ASSOCIATION, SILVER SPRING, MARYLAND, SEPTEMBER 17, 2013,  
STATEMENT

STATEMENT

of the

AMERICAN NURSES ASSOCIATION

to the

United States Senate Judiciary Subcommittee on the  
Constitution, Civil Rights, and Human Rights

regarding

*"Stand Your Ground Laws"*

September 17, 2013

American Nurses Association  
8515 Georgia Avenue, Suite 400  
Silver Spring, MD 20910  
Phone: 301.628.5000 Fax: 301.628.5001  
[www.Nursingworld.org](http://www.Nursingworld.org)

**Statement  
of the  
American Nurses Association  
to the  
United States Senate Judiciary Subcommittee on the  
Constitution, Civil Rights, and Human Rights**

*Stand Your Ground Laws*

**September 17, 2013**

The American Nurses Association (ANA) continues to be concerned over the continued gun violence perpetrated in this country every day. The recent acquittal in the tragic shooting death of Travon Martin has drawn attention not only to gun violence in this country but, perhaps more importantly, to state laws that allow citizens to employ deadly force to defend themselves. ANA shares in the concerns of many advocacy groups that worry that the implementation of these laws is having serious and all-too-often unintended consequences and we applaud the Subcommittee for addressing them here today.

ANA is the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses, and advances the nursing profession by fostering high standards of nursing practice, promoting the rights of nurses in the workplace, and sharing a constructive and realistic view of nursing's contribution to the health of our nation.

As the largest providers of health care in this country, nurses are uniquely positioned to witness first-hand the devastating impact of gun violence. Gunshot victims make up a sizeable number of patients in many of our country's urban emergency rooms. While ANA fully respects the Second Amendment and a citizen's right to bear arms, we also know that many state laws allow for private citizens to carry concealed firearms and use them to defend themselves when deemed their lives are in danger. Unfortunately, as we're sure the committee agrees, many times these incidents are complex and difficult to fully comprehend. We believe that some sensible steps can be taken to both protect the rights afforded us in the Constitution while protecting the citizens of this country from the often unintended consequences of these "stand your ground" laws.

ANA believes that many "stand your ground laws" have the potential to lead to tragic deaths like that of Travon Martin and for this reason we urge Congress to continue to investigate this important issue in an attempt to cut down on senseless gun violence. To that point, we also believe in the ongoing attempt towards strengthening penalties for gun trafficking and instituting a mandatory background check for anyone looking to purchase a gun. We also encourage Congress to focus on ways to address the issue of mental health in our country. For too long we have turned a blind eye to those suffering from mental illness. From its sheer stigma to a lack of education and funding, many of those suffering from mental illness slip through the cracks and don't receive the proper care they need and deserve.

American Nurses Association  
8515 Georgia Avenue, Suite 400  
Silver Spring, MD 20910

When it comes to tackling the issues of gun violence stemming from “stand your ground” laws, there are no easy answers. ANA applauds the Committee for addressing this critical problem facing our country and looks forward to working with Chairman Durbin, Ranking Member Cruz, the Senate Constitution, Civil Rights, and Human Rights Subcommittee, and other members of the full Committee in order to ensure that we continue to invest the time and necessary resources in tackling these tough issues facing the nation.

ANA would be happy to provide additional resources or assistance as the committee moves forward on this and other issues related to health care and nursing.

AMERICA'S ESSENTIAL HOSPITALS, WASHINGTON, DC, BRUCE SIEGEL, MD, PRESIDENT  
AND CEO, SEPTEMBER 16, 2013, STATEMENT



AMERICA'S  
ESSENTIAL  
HOSPITALS

September 16, 2013

Senator Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Durbin,

On behalf of America's Essential Hospitals (formerly the National Association of Public Hospitals and Health Systems) I write expressing our thanks for your interest in improving gun safety and reducing violence. We firmly believe efforts to improve gun safety and reduce violence are beneficial to the nation's health.

America's Essential Hospitals represents more than 200 hospitals that provide high-quality care to all patients, regardless of their socioeconomic background or ability to pay. Our hospitals have significant experience dealing with issues directly and indirectly connected to gun violence, as they are often the source of care for victims of gun violence. Trauma care is among the most important services essential hospitals offer, and they are the only source of level I trauma care (or trauma care at all) in many communities across the country. Our hospitals also play a significant role in providing emergency outpatient and inpatient mental health services to their community.

We recently surveyed our members and collected information on their violence prevention work and mental health services. The following are just a few of their efforts:

- Several hospital systems lead CeaseFire programs in their hospitals. Modeled on CeaseFire Chicago, these programs use violence interrupters, who are outreach workers from the same, hotspot communities as many victims, which gives them credibility with high-risk youth. The programs also link victims and their families to supportive services that can reduce the likelihood of future violence.

[essentialhospitals.org](http://essentialhospitals.org)

AMERICA'S ESSENTIAL HOSPITALS  
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- A Florida hospital system has created a Crisis Intervention Training Program to help law enforcement and first responders identify early signs of mental illness and develop a jail diversion program for individuals with mental illness within the criminal justice system.
- A California member system takes part in a robust variety of violence prevention programs. One unique example is a program to remove gang-related tattoos from ex-gang members as part of an effort to assist them in gaining meaningful employment.
- A member hospital in the Northeast created the Violence Intervention Advocacy Program. This program aims to prevent future violence stemming from prior assaults and to improve the quality of life for victims of violence.

Our hospitals work hard to prevent violence in their communities and remain committed to serving all patients, even the most vulnerable. We hope Congress will remain interested in reducing violence and improving gun safety for the health of our nation. We appreciate your interest in the work of our hospitals and we look forward to continuing to participate in this dialogue.

Sincerely,

Bruce Siegel, MD, MPH  
President and CEO  
America's Essential Hospitals

ACADEMIC PEDIATRIC ASSOCIATION, McLEAN, VIRGINIA, SEPTEMBER 17, 2013,  
STATEMENT



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September 16, 2013

Chairman Dick Durbin  
Ranking Member Cruz  
Members of the Senate Judiciary Subcommittee on the Constitution, Civil  
Rights and Human Rights

### Testimony For the Record "Stand Your Ground" Laws

The Academic Pediatric Association (APA) appreciates the opportunity to submit testimony regarding "Stand Your Ground" Laws. The APA is an organization of more than 2,000 academic pediatricians and allied child health professionals, dedicated to the health and well-being of children and youth. We are grateful to be joined in this testimony by the American Pediatric Society (APS) and the Association of Medical School Pediatric Department Chairs (AMPSDC), two of the nation's leading organizations supporting academic pediatrics and academic pediatric departments across the country, under the larger umbrella of the Pediatric Policy Council (PPC), an alliance of organizations advising on federal policies impacting children's health issues.

The members of our organizations shared in the nation's grief when 20 young children and 6 of their teachers were killed in the mass shooting in Newtown, Connecticut. As terrible as this mass murder was, we also note that more than 20,000 American children and youth sustain firearm injuries and 6,500 die annually. These injuries most often happen one at a time in our homes, on our streets, and in other places where children live and play. In this age group, firearm injuries cause twice as many deaths as cancer, 5 times as many as heart disease, and 20 times as many as infections.

We believe that, on balance, "Stand Your Ground" laws most likely diminish the health and well-being of children and youth by implicitly encouraging impulsive use of lethal force in public places.

Since 2005, "Stand Your Ground" laws have been adopted by 26 states. Trayvon Martin's death in Florida has focused public attention on the impact that these laws may have on the unnecessary use of lethal force in altercations occurring outside the home that might otherwise not have resulted in homicide. Concerns have also been raised that these laws disproportionately affect youth and minorities, who may be inappropriately perceived as dangerous in public places.

This threat to public health is magnified by the proliferation of concealed carry laws, now in all 50 states, and by evidence that there are now more than 300

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WRITTEN TESTIMONY TO THE SENATE COMMITTEE ON THE JUDICIARY  
Subcommittee on the Constitution, Civil Rights and Human Rights  
Page 2 of 2

million guns possessed by Americans. The combination of concealed firearms and “Stand Your Ground” laws substantially increases the likelihood that children and youth will be injured or killed by gunfire, as either targets or bystanders.

Finally, there is evidence suggesting that homicides have increased in states with “Stand Your Ground” laws compared to states without such laws. Cheng and Hoekstra in a publication forthcoming in the *Journal of Human Resources* found that the laws are associated with an 8 percent increase in homicides, without measurably deterring crimes such as burglary, robbery or aggravated assault.

In summary, the APA, APS, AMSPDC, and PPC support the repeal of “Stand Your Ground” laws because they diminish the safety, and ultimately the health and well-being, of children and youth in America’s public spaces. We also strongly support the authorization and funding of additional research designed not only to rigorously investigate the impact of “Stand Your Ground” laws but also to prevent needless firearm-related injury and death among the children and youth of America.

**Submitted on behalf of:**

Academic Pediatric Association

American Pediatric Society

Association of Medical School Pediatric Department Chairs

## ARIZONA COALITION TO PREVENT GUN VIOLENCE, STATEMENT

**“STAND YOUR GROUND” TESTIMONY**  
**Submitted to the Senate Judiciary Subcommittee**  
**On the Constitution, Civil Rights and Human Rights**

The Arizona Coalition to Prevent Gun Violence, comprised of Arizonans for Gun Safety, AZPASS (Arizona – People Acting for a Safety Society), Moms Demand Action for Gun Sense in America (Phoenix and Tucson chapters), Tucson Committee Against Gun Violence, and numerous other organizations, is pleased to submit this testimony due to concerns that Arizona’s revised self-defense laws, which were amended in 2006 and 2010, coupled with Arizona laws permitting people to carry concealed or visible loaded weapons in most public places, combine together to actually encourage rather than discourage homicide in this state.

Arizona State Senators Leah Landrum Taylor and Steve Gallardo presented their Stand Your Ground concerns to the Coalition during a September 3, 2013 meeting and all agreed to work together to convene a stakeholders meeting to thoroughly review the current law, and determine whether it should be amended or repealed. Senior Policy Advisor Mel Hannah also expressed his concern on behalf of Phoenix Mayor Greg Stanton.

The Coalition is now working to gather the facts, studies, and hard evidence needed to determine how the law is affecting the citizens of Arizona. We expect a stakeholders meeting to occur in the near future and look forward to an honest and open discussion whether current self-defense laws increase or reduce public safety. We feel very strongly that state laws should discourage the use of deadly force and such measures should be taken only when absolutely necessary for self-protection.

**The Legislative History of Self-Defense Law in Arizona**

The Pre-2006 Law in Arizona

In 1977, Arizona statutes codified what had long been the common law of self-defense. Arizona Revised Statute (“ARS”) § 13-404, provided that:

(A) a person is justified in using physical force to the extent a reasonable person would believe that physical force is **immediately** necessary to protect himself against another’s use of force. Subsection (B) provided that **force was not justified when the person provoked the other person’s use of force**, and could have simply withdrawn from the encounter instead of using force.

A.R.S. § 13-405 provided that a person was justified in using **deadly force** if the force was justified under A.R.S. § 13-404 **and if** the deadly force used was immediately necessary.

A.R.S. § 13-205 provided that if a person used force against another, that person had the burden of proving to the jury “by a preponderance of the evidence” that his use of force was justified. In other words, the force or deadly force would be a crime unless the jury

**“STAND YOUR GROUND” TESTIMONY**  
**Submitted to the Senate Judiciary Subcommittee**  
**On the Constitution, Civil Rights and Human Rights**

was convinced that the violence was immediately necessary, and that retreat was not an option.

To summarize, prior to 2006, the law in Arizona did not allow a person to use physical or deadly force against another if he could retreat to avoid it, and only if the force was immediately necessary. If a person did use force or deadly force, he would be convicted of a crime unless a jury could be convinced that the force was necessary under the circumstances.

In 2006, Arizona made its first of two major revisions to the criminal code and to the law of self-defense. It expanded the “Castle Doctrine” – which refers to the idea that a person’s home is his castle. The proponents of that law argued that a person who uses self defense in his home or car should not fear criminal prosecution if forced to defend himself.

A.R.S. § 13-418 was added in 2006. It provides that a person is justified in using physical or deadly force, if that person (or another person nearby) faces death or serious injury, from a third person who has, or is about to, unlawfully or forcibly enter a residential structure or occupied vehicle. In those instances, the person using force “has no duty to retreat before using physical force.”

In addition to removing the duty to retreat when reacting to an unlawful entry into a home or occupied vehicle, the 2006 amendment shifted the burden of proof at trial from the accused to the state. Although the pre-2006 version of A.R.S. § 13-205 provided that the defendant had the burden of proving by “a preponderance of the evidence” that his use of force was immediately necessary and justified, the post 2006 version of A.R.S. § 13-205 provided that “justification defenses under Chapter 4 of this Title are not affirmative defenses.” That meant the state had the burden of proving the use of force was a crime “beyond a reasonable doubt.” A negative case is hard to prove thus making conviction difficult to achieve.

In *State v. King*, 225 Ariz. 87 (Ariz. 2010), the Arizona Supreme Court decided that this change in the law meant that a defendant was entitled to have the jury instructed that the state has the burden of proving guilt beyond a reasonable doubt whenever there was the “slightest evidence” of self-defense. In the *King* case, a homeless man hit the defendant on the head with a water bottle. This level of force was enough to entitle the defendant to a self-defense instruction, even if the defendant’s fear of injury was not the defendant’s “sole motivation” for the use of force.

The 2010 / 2011 Changes

The biggest changes to Arizona’s self-defense law happened in 2010/ 2011. The 2006 revised law eliminated the duty to retreat in a home or occupied car. The 2010 law

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removed the duty to retreat “in any lawful place.” The practical effect of this latest law may be that the duty to retreat has been eliminated altogether.

More specifically, A.R.S. § 13-405 – governing the use of deadly force – was amended to add a new paragraph:

“B. A person has no duty to retreat before threatening or using deadly force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.”

Although there have been no reported Arizona Supreme Court or Court of Appeals opinions interpreting this new language, the 2010 law is either a radical change, or it introduces unworkable confusion into the law.

A.R.S. § 13-404, quoted above, was not amended. It still provides that a person may not use force if he “provoked” the encounter, and if it was possible to retreat.

However, A.R.S. § 13-405 now provides that a person has “NO” duty to retreat whenever he is lawfully present in that location and he is not engaged in an unlawful act.

If the word NO means NO, or NO EXCEPTIONS (which is the most common interpretation of the word), then the 2010 version of A.R.S. § 405 amended § 404 means there is NO duty to retreat – even if the person provoked the encounter, as long as the person is lawfully present and not engaged in an unlawful act. A person would only have a duty to retreat, despite provoking the encounter, if the person was not lawfully present, or engaged in an unlawful attack. Moreover, the 2006 change in § 205 means that the burden of proof would be on the state to prove that the initiator was not justified in using self-defense beyond a reasonable doubt before being convicted.

If the change to § 405 did not amend section § 404, then Arizona law (and that of many other states) is hopelessly confused. Section 404 implies that a person who provokes an encounter has a duty to retreat. Section 405 says there is no duty to retreat in any instance in which the person is lawfully present.

If the amendment to § 405 amended § 404, then there has been a radical change in the law. People may shoot first, without stopping to evaluate whether retreat is possible. This is particularly troublesome in Arizona because people are more likely to have guns in public places than in other states.

The confusion and difficulty to obtain a conviction with the Stand Your Ground laws was evident in the Zimmerman trial for the homicide of the 17 year old Trayvon Martin in Florida. Although the Florida Stand Your Ground law is different from the Arizona law, Arizona law does not require a separate hearing prior to filing criminal charges (in Florida the prosecution must hold a separate hearing and show “probable cause” that the

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use of self-defense was unjustified prior to a criminal prosecution -- now known as a Stand Your Ground Hearing), the laws are substantively similar regarding the core elements. In both states, there is no duty to retreat from any lawful place. In both, the burden of proof is on the state to prove that self-defense was not justified beyond a reasonable doubt.

After the Zimmerman trial, Good Morning America interviewed juror #2. The juror felt that Zimmerman “got away with murder” due to the law. That juror was quoted as: “But as the law was read to me, if you have no proof that he killed him intentionally, you can’t say he’s guilty.”

The problem in Arizona may be even greater than in Florida. Florida requires a permit to carry a concealed weapon, while Arizona does not.

**The Impact of New Self-Defense Law and Stand Your Ground**

Stand Your Ground Laws Encourage Lethal Force

There are many reasons to believe that the stand your ground changes in the law will cause encounters, which otherwise might not have resulted in death, to escalate into deadly violence due to a perception that there is now a lower chance of criminal prosecution.

The Tampa Bay Times has done an outstanding job of cataloging the effect of Florida’s Stand Your Ground law. Since that law was enacted in 2006, the Florida Department of Law Enforcement reported that justifiable homicides tripled.

A Texas A&M Study by Professors Mark Hoekstra & Cheng Cheng, who reviewed FBI crime statistics for the years 2000 to 2010, and found an 8% net increase in the number of reported murders and non-negligent manslaughters. They found approximately 600 more homicides nationally in the states with Stand Your Ground laws.

Similarly, John Roman and Mitchell Downey of the Urban Institute Statistical Review, reviewed FBI data from January 2005 to December 2009 and found that 13.6% of homicides were found justified in states with stand your ground laws, while only 7.2% of homicides were found justified in states without the laws.

This Law Has A Disparate Racial Impact

The Tampa Bay Times reported in June 2012 that the Florida stand your ground law resulted in disparate impacts. For example, defendants claiming “stand your ground” are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white.

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The July 23, 2013 CBS Opinion Poll, taken 10 days after the Zimmerman verdict, found that 86% of African Americans disapproved of the verdict, with 84% strongly disapproving, while 51% of whites approved of the verdict.

Arizona’s Law Permits Weapons In Most Public Places

Most people have heard of the Battle of the O.K. Corral in Tombstone, Arizona in 1881. But fewer people know that the battle started when the Marshall Virgil Erp tried to disarm the Clantons to enforce a local ordinance that barred anyone from carrying firearms in town. After that famous gun battle, the entire territory banned guns. The 1887 Arizona territorial code criminalized carrying a concealed weapon in a town.

Then, after 100 years of gun restrictions, Arizona gun laws changed.

Arizona is only one of 3 states (Arizona, Alaska and Vermont) that permit any person over 21 years of age to carry a concealed weapon in most public places without a permit of any type. See, A.R.S. § 13-3112. In Arizona, any person 18 years or older may openly carry a loaded firearm in a holster or case in most public places. A.R.S. § 13-3112 (B). In Arizona it is easier to obtain and carry a concealed weapon than it is to obtain a driver’s license. No training is necessary. No license or permit is required. There is no proof of insurance necessary.

In 2004, prior to the adoption of stand your ground laws, Arizona ranked 6<sup>th</sup> out of the 50 states in gun violence. In 2013, a Center for the American Progress study ranked Arizona 4<sup>th</sup> in the nation for the level of gun violence.

Arizona Has Eliminated Civil Liability

Arizona law, A.R.S. §13-413, also provides that a person who is not convicted of a crime because he felt justified in using force is not civilly liable. In other words, if the victim lives, he can’t sue the attacker for his injuries. The law could also be interpreted to prevent a third party from filing a civil suit if the justified violence wounds an innocent bystander.

The Combination Does Not Bode Well

In Arizona, there is reason to fear that if an armed person provokes an encounter in a public place, if the person so confronted reacts with force, the initiator would feel entitled to, if not encouraged to, shoot the challenger dead if at any point during the confrontation the initiator feared serious injury or death. In other words, this law appears to say that a person can start a fight, and shoot to kill without criminal prosecution or civil liability, if the initiator begins to feel afraid and reasonably believes that force is necessary to protect him against the other’s force.

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Unfortunately, we are left to conclude that the criminal law in Arizona is designed to encourage rather than discourage homicide, a tragedy indeed.

Testimony prepared by:  
Ellen Davis Esq.  
Chair, AZ-PASS

Submitted on behalf of:  
Arizona Coalition to Prevent Gun Violence

Contact:  
Hildy Saizow  
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CEASEFIREPA, PENNSYLVANIA, SEPTEMBER 17, 2013, STATEMENT

**Testimony of CeaseFirePA Submitted for the Record of the Hearing of the  
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights  
On  
“‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the  
Expanded Use of Deadly Force”  
September 17, 2013**

**Introduction**

CeaseFirePA is a coalition of mayors, police chiefs, faith leaders, community organizations and individual Pennsylvanians taking a stand against gun violence. We are the largest gun violence prevention organization in Pennsylvania and engage in education, coalition-building and advocacy with the goals of reducing gun violence, stopping the flow of illegal guns into our communities and keeping guns out of the hands of those who should not have them. We thank the SubCommittee for the opportunity to submit this testimony.

In 2011, Pennsylvania amended its longstanding Castle Doctrine and transformed it into a Stand Your Ground or Shoot First Law. This occurred despite the opposition of police and prosecutors and the absence of any evidence that traditional self-defense laws and the Castle Doctrine were not working. There were no examples of cases where someone was unfairly convicted -- or even prosecuted -- while having a valid claim of self-defense under the then-existing Castle Doctrine.

However, Pennsylvania ceded to the demands of the gun lobby and relaxed longstanding restrictions on the use of deadly force. Because of the efforts of prosecutors, certain safeguard were built into the law that eventually passed that make it preferable to Stand Your Ground Laws in other states. But even with these safeguards, CeaseFirePA stands by the testimony it offered in 2009 and on each occasion that the legislature and Governor considered changing the law: transforming the Castle Doctrine into a Shoot First Law was and remains an unnecessary and dangerous expansion of the law that puts Pennsylvanians at risk.

The amending of the Castle Doctrine represented a major change in the traditional law of self-defense. In addition to the jurisprudential changes, these new laws have a troubling practical effect on the ability, and seeming willingness, of individuals to resort to deadly force during confrontations. The research to date demonstrates that CeaseFirePA was right to sound an alert in 2009 when Pennsylvania began the process of amending its law. Rather than offer greater protection and safety to Pennsylvanians, the expansion of the Castle Doctrine endangers us by emboldening those who would escalate a conflict rather than resolve a situation through safe retreat.



### **Existing Self-Defense Law was Protecting Justifiable Uses of Deadly Force**

Where deadly force is justified, Pennsylvania prosecutors have a long history of deciding not to prosecute. Thus, the opposition of Pennsylvania prosecutors to amending the Castle Doctrine. As Dauphin County District Attorney Ed Marsico, Chair of the Pennsylvania Association of District Attorneys, explained while the bill was being enacted, "We still believe current law is adequate -- we have a castle doctrine currently."<sup>1</sup>

Montgomery County District Attorney Risa Ferman explained that during the debate over the expanded Castle Doctrine, "prosecutors could not identify a single questionable case in the state where somebody had been wrongly charged with a shooting that was legitimate self-defense."<sup>2</sup> Ferman further explained that although Pennsylvania's district attorneys eventually negotiated to improve the amendments to the Castle Doctrine, she still believed the expansion to be unnecessary:

[S]tate law has always allowed residents to use deadly force to defend themselves, and her office will not press charges against anyone using a weapon to thwart a violent attack. . . .

"When you look at the cases where we analyze self-defense and the law of justification, we have never used this new law, because we don't have to. . . . We just use basic self-defense law, and apply the law to the facts and come to the same conclusion."<sup>3</sup>

These comments followed the decision by Ferman's office not to prosecute a man who shot two men, killing one of them, who attacked him with baseball bats on his property.

Despite the District Attorneys' negotiations over the legislation and successful efforts to craft legislation that included safeguards that the Florida version of Stand Your Ground lacked, it is clear that the prosecutors of this state did not believe an expansion of the Castle Doctrine was necessary or desirable. CeaseFirePA continues to agree with this assessment.

### **The Data Demonstrates that Expanding the Castle Doctrine Escalates Violence**

Lethal force should always be a last resort; the expanded Castle Doctrine changes the calculus and enables people to use deadly force without considering other options such as safe retreat.

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<sup>1</sup> Kari Andren, Pennsylvania Castle Doctrine Opponents Worry Expanded Self-Defense Rights Could Lead to Violence, Patriot News, April 16, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/04/pennsylvania\\_castle\\_doctrine\\_o.html](http://www.pennlive.com/midstate/index.ssf/2011/04/pennsylvania_castle_doctrine_o.html).

<sup>2</sup> Keith Phucas, Montco DA: Pa. Castle Doctrine Has Exceptions Fla. Law Lacks, Main Line Times, April 10, 2012.

<sup>3</sup> Phucas, April 10, 2012.

The new law gives cover to those who are not judicious in their assessment of the need for deadly force. Research and data analysis of the impact of Stand Your Ground laws demonstrates that concerns about such laws escalating violence were justified. The evidence shows that these laws endanger -- rather than protect -- our communities. As Mark Hoekstra, a Texas A & M University economist who studied the impact of Stand Your Ground laws explained on National Public Radio earlier this year, "These laws lower the cost of using lethal force. . . Our study finds that, as a result, you get more of it."<sup>4</sup>

The Texas A & M study compared states with and without the amended laws and compared crime rates within states before and after passage of Stand Your Ground laws. Hoekstra studied whether the numbers of justifiable homicide cases increased and whether the incidences of criminals using lethal force increased following passage of stand your ground laws. He found that neither classification significantly increased. The study further found that "homicides go up by 7 to 9 percent in states that pass the laws, relative to states that didn't pass the laws over the same time period. . . [and] we find no evidence of any deterrence effect over that same time period."<sup>5</sup> In raw numbers, the study found that the eight percent increase translated into 600 more homicides annually across expanded Castle Doctrine states.<sup>6</sup>

The study found that Stand Your Ground laws result in more homicides. As Hoekstra explained, "[the] data suggest. . . that in real-life conflicts, both sides think of the other guy as the bad guy. Both believe the law gives them the right to shoot."<sup>7</sup> This finding supports preamendment predictions that expanding the Castle Doctrine would not protect Pennsylvanians so much as it would justify escalation of violence. The study assesses Stand Your Ground laws in this way:

These laws alter incentives in important ways. First, the laws reduce the expected cost of using lethal force. They lower the expected legal costs associated with defending oneself against criminal and civil prosecution, as well as the probability that one is ultimately found criminally or civilly liable for the death or injury inflicted. In addition, the laws increase the expected cost of committing violent crime, as victims are more likely to respond by using lethal force..<sup>8</sup>

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<sup>4</sup> Shankar Vedantam and David Schultz, "'Stand Your Ground' Linked to Increase in Homicides," National Public Radio, January 2, 2013, <http://www.npr.org/2013/01/02/167984117/-stand-your-ground-linked-to-increase-in-homicide>.

<sup>5</sup> *Id.*

<sup>6</sup> [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf), at 4.

<sup>7</sup> Vedantam and Schultz, Jan. 2, 2013.

<sup>8</sup> [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf), at 1.

A separate study conducted by economists at Georgia State University also concluded that Stand Your Ground states ended up with higher homicide rates.<sup>9</sup> These researchers also concluded that Stand Your Ground laws do not make us safer. They then went further and opined that the Stand Your Ground laws may be leading more people both to carry firearms and to resort to using them than would have been the case under the preexisting laws:

One potential explanation offered for a positive relationship between SYG laws and homicides is that an increased number of individuals may carry guns in public and [be] willing to use them as a result of these laws. . . . If more individuals, emboldened by the no duty to retreat, are resorting to the use of force in self-defense, then an increased likelihood of gun presence in these situations may result in a rise in homicides.<sup>10</sup>

This is one of the problems CeaseFirePA warned about in its 2009 testimony to the House Judiciary Committee. Former Executive Director Joe Grace explained that the proposed Castle Doctrine expansion would "condone[] or perpetuate[] a shooting culture in our state" where gun violence was already unacceptably high and the numbers of shootings of police officers was on the rise.<sup>11</sup> CeaseFirePA argued that the law was unnecessary and would put Pennsylvanians and in particular Pennsylvania law enforcement officers at further risk. The data and research from other states reflected in the Texas A&M and Georgia State studies (neither of which included Pennsylvania data because the law was enacted too late) confirm these predictions.

### **Conclusion**

If in fact Stand Your Ground Laws result in more guns being carried and used, then CeaseFirePA was correct to warn that a law purportedly designed to keep people safer would actually lead to more violence. As we have argued every time Stand Your Ground laws have been considered in Pennsylvania, there are much more effective ways to reduce violence and make our streets safer. We have long advocated for a statewide requirement that individuals report if their guns are lost or stolen as an effective measure for identifying straw purchasers and traffickers and keeping legal guns from being illegal guns used for criminal purposes. We have long argued -- before the legislature and in the courts -- for gun possession and trafficking crimes to be treated seriously with significant sentences. We believe Pennsylvania could make a much bigger impact in reducing gun violence by such measures. We regret that our legislature and Governor chose

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<sup>9</sup> Chandler B. McLellan, Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries*, NATIONAL BUREAU OF ECONOMIC RESEARCH (June 2012).

<sup>10</sup> McLellan at 23

<sup>11</sup> Testimony of CeaseFirePA before the Pennsylvania House Judiciary Committee, Nov. 19, 2009.

instead to enact an unnecessary law that has now been empirically demonstrated to increase gun violence in other states.

CENTER OF THE AMERICAN EXPERIMENT, GOLDEN VALLEY, MINNESOTA, MITCH  
PEARLSTEIN, PH.D AND KIM CROCKETT, J.D., AUGUST 30, 2013, LETTER



*Building a Culture of Prosperity for Minnesota and the Nation*

August 30, 2013

The Honorable Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Durbin,

We received your August 6, 2013 letter of inquiry regarding ALEC. Our public response was published by the Minneapolis Star Tribune, and is attached.

We thought it fitting to use a free press to respond to your unusual inquiry. We intend to vigorously defend our right to freely speak and associate. We will object out loud and in public when a U.S. Senator uses his office to attempt to intimidate those with whom he disagrees on matters of public policy.

Out of respect for the institution of the United States Senate and the office which you hold, we assure you that we are operating in full compliance with all laws.

We suggest that the United States Senate has important and urgent matters before it—and that questions of criminal law and policy should be left to the states as envisioned by the U.S. Constitution. Minnesota has elected leaders who are more than competent to address the concerns you raise about state legislation.

We note that you plan to hold hearings next month as chair of the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights—and that you intend to include our response to your letter in the hearing record so that it is publicly available.

Sunshine is the best bleach in these matters so we welcome the inclusion of this letter in the hearing record or anywhere else you wish to publish it.

We have copied Minnesota Senators Al Franken and Amy Klobuchar so they know of your attempt to intimidate a Minnesota-based policy organization.

Respectfully,

Mitch Pearlstein, Ph.D.  
Founder & President

Kim Crockett, J.D.  
COO, Exec. VP & General Counsel

cc: The Hon. Al Franken, The Hon. Amy Klobuchar

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CHICAGO SUN-TIMES, SEPTEMBER 27, 2013, EDITORIAL

Chicago Sun-Times

## End 'stand your ground' in Illinois

Editorials September 27, 2013 5:36PM

Updated: September 29, 2013 2:34AM

So-called "stand your ground laws" have led to unnecessary shootings around the country, and now Illinois is on the brink of having one of its own sneak onto the books through the back door. The Legislature should act to prevent that before anyone dies in one of those stupidly unnecessary confrontations.

Historically, laws in America generally have required people to retreat from confrontations if possible before resorting to lethal force. But in recent years, stand your ground laws — which allow individuals claiming to fear for their lives to use such force even if they have the opportunity to back away — have spread in some form to about 30 states. Opponents — and that would include this editorial page — call them "shoot first" laws.

Illinois does not have such a statute on the books, but past court rulings in the state appear to grant the "stand your ground" right anyway. Until now, that hasn't been a significant issue because Illinoisans were not allowed to carry concealed firearms in public. But this year, the Legislature authorized the concealed carrying of weapons, and the State Police expect to start issuing permits early next year. Lethal stand your ground cases could follow soon after.

A study released Sept. 16 by the National Urban League and Mayors Against Guns found justifiable homicides increased by an average of 53 percent between 2005 and 2007 in the 22 states that had passed stand your ground laws while falling 5 percent in the rest of the country. In Florida, the number of justifiable homicides tripled. U.S. Attorney General Eric Holder in July said the laws "senselessly expand the concept of self-defense" and may encourage "violent situations to escalate." The percentage of cases in which homicide was ruled justified was far higher when the victims were African Americans.

There's no way of knowing how many of those cases involved people who thought their lives were being threatened but who in fact were just overly nervous. That's because the other person in the confrontation often is no longer alive to give his or her side of the story.

That played out last year in Texas, for example, when Raul Rodriguez videorecorded himself saying "my life is in danger now" and "I'm standing my ground here" before fatally shooting his unarmed neighbor in a dispute over a loud party. Rodriguez was convicted of murder, but he might not have shot his neighbor if he didn't think Texas' law would protect him. In Brevard County, Fla., William Woodward is seeking a stand your ground hearing after being accused of gunning down three unarmed neighbors, killing two and seriously wounding the third. One of the neighbors was shot 17 times.

Stand your ground supporters say the laws discourage crime. But a 2012 study by Texas A&M University found the laws do not reduce the rate of robberies, burglaries or aggravated assaults.

Part of the problem with the laws is that they encourage the George Zimmermans of the world to think they can enforce laws because they are carrying firearms. Also, Illinois' new concealed carry law does not require any instruction about when it is appropriate to use lethal force. Police officers, who receive extensive training, still make bad decisions at times in difficult situations. People without any training will do far worse.

Earlier this month, U.S. Sen. Richard Durbin was scheduled to hold a hearing on stand your ground gun laws, but, ironically, it was canceled because of the Washington Navy Yard shootings. The hearing will be rescheduled, probably next month, a spokesman said.

After a drawn-out fight over concealed carry legislation last spring, the Legislature may be tired of dealing with gun issues. But this is one area of the law that needs to be fixed soon.

## COALITION, OCTOBER 29, 2013, LETTER TO SENATOR DURBIN

October 29, 2013

The Honorable U.S. Senator Dick Durbin  
 Assistant Majority Leader  
 Chairman of the Senate Judiciary Subcommittee  
 on the Constitution, Civil Rights, and Human Rights  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

Dear Senator Durbin:

We write to commend you for holding this hearing today on the effects of "model" legislation that has been used to exonerate the use of deadly force in senseless tragedies where shooting victims were pursued and were unarmed.

It is an indisputable fact that for more than six years the American Legislative Exchange Council (ALEC) pushed "Stand Your Ground" legislation to state lawmakers across the country. Thanks to ALEC's corporate-funded lobbying efforts, more than two dozen states have such laws in effect.

Citizens exercising their freedom of speech expressed outrage over these laws and the role of the corporate-funded ALEC in pushing them, which led ALEC to stop advocating for the deadly and flawed legislation. However, to date, ALEC has not called on states to repeal the damage done. ALEC has also claimed that Stand Your Ground played no role in the verdict in the trial of George Zimmerman for the killing of Trayvon Martin, even though the jury was instructed that Zimmerman had a "right to stand his ground and had no duty to retreat," under that bill.

For years – with corporate lobbyists secretly voting with legislators on "model" bills like this one – ALEC has engaged in a stealthy campaign to dismantle workers rights, privatize public institutions, thwart efforts to address climate change, and prevent juries from holding corporations accountable.

It has done so while claiming to the IRS that it engages in zero lobbying. It has also spent millions on trips for lawmakers while claiming to the IRS that it spends almost nothing on travel for public officials. That is why it is the subject of three pending complaints to the IRS alleging tax fraud.

Accordingly, we reject the claims of ALEC and its boosters that it is inappropriate for the Senate Judiciary Committee to hold this hearing or inquire whether the corporate funders of ALEC support the misguided and deeply flawed Stand Your Ground laws. The Senate also has ample grounds inquire into a group that has been accused of tax fraud for secret lobbying and gifts.

We thank this Committee for shining a light on these important matters.

Sincerely,





CREDO ACTION, JORDAN KRUEGER, CAMPAIGN MANAGER, SEPTEMBER 16, 2013,  
LETTER AND APPENDIX



September 16, 2013

Sen. Dick Durbin  
711 Hart Senate Bldg.  
Washington, DC 20510

Dear Sen. Durbin

I am writing to deliver the testimonials of **21,482** who want to stop the proliferation of Stand Your Ground laws.

The NRA, backed by gun manufacturers and politicians associated with the shadowy right-wing American Legislative Exchange Council (ALEC), have helped shepherd Shoot First laws through dozens of states. These laws dangerously offer a legal stamp of approval to a "shoot first, ask questions later" mentality.

Throw in the eye-popping number of concealed-carry permits (which now stands at 8 million nationally) and lax gun laws generally, and you have a dangerous recipe for unnecessarily violent, often fatal, conflict. In Florida, for example, the rate of "justifiable" homicides has tripled since the state passed its Shoot First law, in 2005.

**In the following pages, I have included a number of notable testimonials that deserve special attention.**

If you have any questions about these testimonials, please don't hesitate to contact me through the information provided below.

Sincerely,

Jordan Krueger  
Campaign Manager, CREDO Action  
415-369-2000

Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights:

RE: the spread of Stand Your Ground laws

Dear Senators,

**As a USMC veteran** and civilized citizen of our great country, I'm concerned about the proliferation of Shoot First laws. Florida's "Stand Your Ground" legislation, made infamous as George Zimmerman's successful defense for murdering Trayvon Martin, and other laws like it undermine public safety by putting people at risk of gun violence.

The Shoot First principle as codified into law in Florida and other states encourages and allows every paranoid, sub-intelligent vigilante with a gun to go on killing spree, using self-defense as the first option and excuse; and thus avoiding the very intelligent and sane choice of avoiding confrontation. These laws make our communities significantly more dangerous. Many people will be killed just because they reached for a cigarette, or wallet, or simply put their hands in the pocket, because those who carry weapons are motivated to use them. It makes them feel like they are in control, powerful and superior.

Stand Your Ground laws are also a hindrance to justice. Over 70% of people who have invoked Florida's Stand Your Ground law have gone free, including George Zimmerman, who one juror said "got away with murder."

Congress must stand up to the NRA, who is now a shill for gun manufacturers and the shadowy right-wing American Legislative Exchange Council (ALEC)— whose only interest is creating more reasons for people to buy guns.

Thomas Jefferson said "there are no rights without responsibility." Its time our legislators became reasoned and responsible by eliminating the concept of "Stand your Ground". Its patently ridiculous, life-threatening to innocent people and absolutely wrong.

Lets back back to sanity. Trash "stand your ground" laws and have background checks for all weapons purchases.

Sincerely,

Lewis Bottomly  
Glendale, AZ 85308

Dear Senators,

I'm a **25 year Army Veteran** and know that "Shoot First Laws" are just an excuse for people to shoot neighbor with different color skin they have not be introduced to. Or maybe shoot a person they don't like and get away with it because of these stupid laws! I'm concerned about the proliferation of Shoot First laws. Florida's "Stand Your Ground" legislation, made infamous as George Zimmerman's successful defense for murdering Trayvon Martin, and other laws like it undermine public safety by putting people at risk of gun violence.

The Shoot First principle as codified into law in Florida and other states encourages people to act like armed vigilantes, using deadly force even if a violent confrontation can be avoided. These laws make our communities significantly more dangerous.

Stand Your Ground laws are also a hindrance to justice. Over 70% of people who have invoked Florida's Stand Your Ground law have gone free, including George Zimmerman, who one juror said "got away with murder."

Congress must stand up to the NRA — whose only interest is creating more reasons for people to buy guns — by invalidating these laws and passing sensible gun violence prevention legislation.

Sincerely,

Geetanjali Singh  
Schaumburg, IL 60193

Dear Senators,

**As a physician and psychiatrist**, I am extremely concerned about the proliferation of so-called "Stand Your Ground" laws, that essentially permit murder, providing there are no witnesses. No civilized society can or should tolerate this. As far as I can tell, the only ones who benefit are the killers and the gun manufacturers. Common law has allowed for exceptions to murder statutes for centuries, justifying killing in the name of protecting one's life and family, and even property. Stand Your Ground laws, however, extend that right well beyond any historical precedent, and for no justifiable reason. Please do all in your power to reverse this dangerous trend in state legislatures. Thank you.

Sincerely,

Robert Rosenthal  
Pennington, NJ 08534

Dear Senators,

**As a mother of a 10- and a 7-year-old, and as a pediatrician,** I'm concerned about the proliferation of Shoot First laws. Florida's "Stand Your Ground" legislation, made infamous as George Zimmerman's successful defense for murdering Trayvon Martin, and other laws like it undermine public safety by putting people at risk of gun violence.

The Shoot First principle as codified into law in Florida and other states encourages people to act like armed vigilantes, using deadly force even if a violent confrontation can be avoided. These laws make our communities significantly more dangerous.

Stand Your Ground laws are also a hindrance to justice. Over 70% of people who have invoked Florida's Stand Your Ground law have gone free, including George Zimmerman, who one juror said "got away with murder."

Congress must stand up to the NRA — whose only interest is creating more reasons for people to buy guns — by invalidating these laws and passing sensible gun violence prevention legislation.

Sincerely,

Stephanie Develle  
Kirkland, WA 98034

Dear Senators,

What happened in Florida to Trayvon Martin is a disgrace to our country and civil/human rights for all American.

**As a mother of a son that is not only bi-racial but also suffers from mental illness**, I know first-hand how he has been misjudged and inhumanely treated by unknowledgeable individuals and law enforcement personnel just because of his appearance and "quirky" ways. For this reason alone, Stand your ground and shoot first laws are a danger to not only my son, but all young males in our country who don't fit the projected acceptable "profile" and leads to injustice based on these laws as it undermines public safety by putting people at risk of gun violence.

In addition, racial profiling provides for more excessive mistreatment and abuse of power by law enforcement on our young Americans.

Congress must stand up to the NRA — whose only interest is creating more reasons for people to buy guns — by invalidating these laws and passing sensible gun violence prevention legislation."

Sincerely,

Kahy Washington  
Chantilly, VA 20152

Dear Senators,

**My sister's best friend became a widow, and her two school-age children lost their father in January 2011 in a dispute between neighbors. Scott Sumner Standard, a commercial fisherman, was shot to his death right in front of his children by a neighbor who was never charged due to Florida's Stand-Your-Ground laws.**

Not only were four people's lives ruined but the widow and her children had lost their source of support. Imagine how these kids' lives will be affected, living forever with the memory of seeing their Dad shot to death in cold blood.

All that these laws do is give gun manufacturers profits and crazy people license to kill.

I'm concerned about the proliferation of Shoot First laws. Florida's "Stand Your Ground" legislation, made infamous as George Zimmerman's successful defense for murdering Trayvon Martin, and other laws like it undermine public safety by putting people at risk of gun violence.

The Shoot First principle as codified into law in Florida and other states encourages people to act like armed vigilantes, using deadly force even if a violent confrontation can be avoided. These laws make our communities significantly more dangerous.

Stand Your Ground laws are also a hindrance to justice. Over 70% of people who have invoked Florida's Stand Your Ground law have gone free, including George Zimmerman, who one juror said "got away with murder."

Congress must stand up to the NRA — whose only interest is creating more reasons for people to buy guns — by invalidating these laws and passing sensible gun violence prevention legislation."

Sincerely,

Doris Lynch  
Bloomington, IN 47408

Dear Senators,

**As an 82-year-old Oregonian, and gun owner**, the "stand-your-ground" laws seem to me to be out of bounds. Protecting yourself from a home invader, is different from being in a public situation where gun toters seem to want be confrontational. . .and now have these laws to promote "shoot first" and ask later.

I'm concerned about the proliferation of Shoot First laws. Florida's "Stand Your Ground" legislation, made infamous as George Zimmerman's successful defense for murdering Trayvon Martin, and other laws like it undermine public safety by putting people at risk of gun violence.

The Shoot First principle as codified into law in Florida and other states encourages people to act like armed vigilantes, using deadly force even if a violent confrontation can be avoided. These laws make our communities significantly more dangerous.

Stand Your Ground laws are also a hindrance to justice. Over 70% of people who have invoked Florida's Stand Your Ground law have gone free, including George Zimmerman, who one juror said "got away with murder."

Congress must stand up to the NRA — whose only interest is creating more reasons for people to buy guns — by invalidating these laws and passing sensible gun violence prevention legislation.

Sincerely,

Frances Greenlee  
Bend, OR 97701





September 16, 2013

Sen. Dick Durbin  
711 Hart Senate Bldg.  
Washington, DC 20510

Dear Sen. Durbin

I am writing to deliver the signatures of **151,052 Americans** who have signed a petition with the following text:

**"It's time to end 'Stand Your Ground' and other Shoot First laws that undermine public safety, senselessly put people at risk, and enable the kind of tragedy we've witnessed in the case of Trayvon Martin. I'm calling on you to take leadership and undo these dangerous laws now."**

As sad as the death of Trayvon Martin was, what's worse is knowing that *Shoot First* laws are still in place in many states, virtually ensuring that Trayvon Martin will not be the last child in this country murdered with impunity by a gun-toting vigilante.

*Shoot First* gives the legal stamp of approval to a shoot first, ask questions later mentality. These Americans call on you, and Congress, to put an end to these laws, so we can make sure that the George Zimmermans among us don't go free when the next tragedy happens.

If you have any questions about these signatures, please don't hesitate to contact me through the information provided below.

Sincerely,

Jordan Krueger  
Campaign Manager, CREDO Action  
415-369-2000

CONGRESSIONAL RESEARCH SERVICE, WASHINGTON, DC, WILLIAM J. KROUSE,  
SPECIALIST IN DOMESTIC SECURITY AND CRIME POLICY, SEPTEMBER 16, 2013, LETTER



## MEMORANDUM

September 16, 2013

**To:** Senate Committee on the Judiciary  
Attention: Dan Swanson

**From:** William J. Krouse, Specialist in Domestic Security and Crime Policy, 7-2225  
Matt Deaton, Presidential Management Fellow, 7-1122

**Subject:** **Supplementary Homicide Report Data on Black and White Inter-Racial Justifiable Homicides in Comparison (2001-2010)**

Per your request, this memorandum provides a national, statistical baseline with which to assess whether inter-racial justifiable homicides—particularly White-on-Black justifiable homicides—might have increased during the decade (2001-2010). Recent studies have suggested that differences in the percentages of homicide cases that are classified as justifiable homicides for incidents where a Black offender kills a White victim compared to where a White offender kills a Black victim might be evidence of “racial disparities,” and these “disparities” could be amplified by self-defense laws—known collectively as “stand your ground” (SYG) laws<sup>1</sup>—that have been passed in over half the states since 2005.<sup>2</sup> Similarly, others have suggested that these laws arguably lower the consequences for shooting a person and have resulted or could possibly result in an increase in homicides (justifiable or not).<sup>3</sup>

This memorandum does not evaluate these studies, nor does it examine SYG laws. Rather, this memorandum presents raw data collected by the Federal Bureau of Investigation (FBI) in its Supplementary Homicide Reports (SHRs)<sup>4</sup> related to incidents of justifiable homicide for the years 2001 through 2010. The SHR data were analyzed to compare Black and White inter-racial justifiable homicide

<sup>1</sup> Under the common law “Castle Doctrine,” depending on state law, a resident might be under little or no obligation to retreat if a stranger forcibly enters his or her residence and threatens him or her with bodily harm. Although SYG laws differ considerably from state-to-state, they basically extend the Castle Doctrine to places, other than one’s home, where a person might have a legal right to be.

<sup>2</sup> See John K. Norman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute, July 2013, 14 pp., available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

<sup>3</sup> Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, 42 pp., presented in the Testimony of Mark Hoekstra, Associate Professor of Economics, Texas A&M University, Before the American Bar Association National Task Force on Stand Your Ground Laws, February 8, 2013, available at [http://www.americanbar.org/content/dam/aba/administrative/racial\\_ethnic\\_justice/corej\\_syg\\_program\\_book\\_authcheckdom.pdf](http://www.americanbar.org/content/dam/aba/administrative/racial_ethnic_justice/corej_syg_program_book_authcheckdom.pdf).

<sup>4</sup> As part of the Uniform Crime Reports (UCR) program, local law enforcement agencies are asked to record and report monthly to the FBI for their jurisdictions the total number of murders, rapes, robberies, aggravated assaults, burglaries, larcenies, motor vehicle thefts, and arson. Through the SHR program, which is part of the UCR program, states are asked to collect and report additional information on homicides with regard to victim-offender relationships and event circumstances. The form that local officials fill out as part of this program is available at <http://www.fbi.gov/about-us/cjis/ucr/reporting-forms/supplementary-homicide-report-pdf>.

rates<sup>5</sup> with national homicide rates.<sup>6</sup> The SHR data were disaggregated to include single victim/single offender (one-on-one) homicides that were firearms-related (see **Table 1**). For those one-on-one, firearms-related homicide cases, the SHR were further disaggregated to include homicides, classified as justifiable, where the victim and offender were strangers (see **Table 2**).<sup>7</sup> Before proceeding, it is significant to note several data limitations.

- First, the data do not include crime data reported by the state of Florida to the FBI, because of formatting problems associated with computer systems development in that state.<sup>8</sup>
- Second, the data only reflect cases that are initially categorized by law enforcement agencies and they do not reflect any subsequent determination by the criminal justice system (i.e., final case dispositions).
- Third, with regard to race, the data presented in this memorandum make no allowance for the proportion of the population that Blacks and Whites comprise, respectively, within the United States.
- Fourth, the analysis in this memorandum only includes incidents in which both parties are known to be Black and White, which does not include unsolved homicides in which the offender's race is unknown.

In addition, justifiable homicides by private citizens historically might have been under-reported (before 2006), but law enforcement nationally might have been prompted to pay greater attention to justifiable homicide incidents in more recent years because of the controversial nature of SYG laws.<sup>9</sup> Also, it is noteworthy that justifiable homicides, even between strangers, could have occurred under circumstances that have little to do with SYG laws. For example, a private citizen could have killed an armed robber in a bank or convenience store. Alternatively, these cases could include justifiable homicides carried out in private residences and could possibly fall under the “Castle Doctrine.”

Notwithstanding data limitations, the SHR data presented in this memorandum show that there is a difference in the percentage of homicides that were classified as justifiable for Black-on-White compared to White-on-Black cases. And, for White-on-Black justifiable homicides, the number of incidents and percentages increased for 2006-2010, the time period in which several states enacted SYG laws, compared to 2001-2005.

<sup>5</sup> In this memorandum, the justifiable homicide data do not include justifiable homicides by law enforcement. The SHR data were sorted to include private citizen justifiable homicides only. The FBI defines “private citizen justifiable homicides” as the killing of a felon, during the commission of a felony, by a private citizen.

<sup>6</sup> In this memorandum, the national homicide data include private citizen justifiable homicide cases, as well as murder and nonnegligent manslaughter cases. The FBI defines “murder and nonnegligent manslaughter” as the willful (nonnegligent) killing of one human being by another.

<sup>7</sup> At the end of this memorandum, there are two tables (**Tables 3 and 4**) with annual data used to compile **Table 1** and **2**. In addition, **Tables 3 and 4** include data for Black-on-Black and White-on-White justifiable homicides under the conditions outlined in this memorandum.

<sup>8</sup> CRS conversation with the Federal Bureau of Investigation, Criminal Justice Information Services Division on August 29, 2013.

<sup>9</sup> CRS conversation with the Bureau of Justice Statistics (BJS) at the Department of Justice. BJS also noted that an assessment of the quality of private citizen justifiable homicide data has not been conducted.

**Table 1. Black and White Inter-Racial, Single Victim/Single Offender, Firearms-Related Justifiable Homicides (2001-2010)**

	Black-on-White Homicides	Black-on-White Justifiable Homicides	Black-on-White Justifiable Homicides as a % of Black-on-White Homicides	White-on-Black Homicides	White-on-Black Justifiable Homicides	White-on-Black Justifiable Homicides as a % of White-on-Black Homicides
2001-2005	1,484	25	1.7%	802	134	16.7%
2006-2010	1,529	28	1.8%	817	169	20.7%
2001-2010	3,013	53	1.8%	1,619	303	18.7%

Source: Supplementary Homicide Reports.

Under the conditions described above, **Table 1** shows that, for 2001-2005 and 2006-2010, less than 2% of Black-on-White homicides were classified as justifiable. By comparison, nearly 19% of White-on-Black homicides were classified as justifiable. For those time periods, White-on-Black justifiable homicides increased from 134 to 169, or 26.1%. On average, for the entire decade (2001-2010), there were 5.3 cases of Black-on-White justifiable homicides compared to 30.3 White-on-Black justifiable homicide cases, a ratio of one-to-six.

**Table 2. Black and White Inter-Racial, Stranger-on-Stranger, Single Victim/Single Offender, Firearms-Related Justifiable Homicides (2001-2010)**

	Black-on-White Homicides	Black-on-White Justifiable Homicides	Black-on-White Justifiable Homicides as a % of Black-on-White Homicides	White-on-Black Homicides	White-on-Black Justifiable Homicides	White-on-Black Justifiable Homicides as a % of White-on-Black Homicides
2001-2005	609	19	3.1%	333	108	32.4%
2006-2010	571	18	3.2%	360	132	36.7%
2001-2010	1,180	37	3.1%	693	240	34.6%

Source: Supplementary Homicide Reports.

Under the conditions described above, **Table 2** shows that, for 2001-2005 and 2006-2010, about 3% of Black-on-White, stranger-on-stranger homicides were classified as justifiable. By comparison, nearly 35% of White-on-Black, stranger-on-stranger homicides were classified as justifiable for those same time periods. Again, for those time periods, the number of White-on-Black, stranger-on-stranger justifiable homicides increased from 108 to 132, or by 22.2%. On average, for the years 2001-through 2010, there were 3.7 cases of Black-on-White justifiable homicides compared to 24.0 White-on-Black justifiable

homicide cases, a ratio of one-to-six. At the same time, Blacks killed Whites (1,180) more often than Whites killed Blacks (693).

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[illegible]



COALITION TO STOP GUN VIOLENCE, JOSHUA HORWITZ, EXECUTIVE DIRECTOR,  
SEPTEMBER 17, 2013, STATEMENT

**TESTIMONY OF JOSHUA HORWITZ  
EXECUTIVE DIRECTOR, COALITION TO STOP GUN VIOLENCE  
U.S. SENATE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS  
HEARING ON "STAND YOUR GROUND" LAWS: CIVIL RIGHTS AND  
PUBLIC SAFETY IMPLICATIONS OF THE EXPANDED USE OF DEADLY FORCE"  
SEPTEMBER 17, 2013**

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz and I am the executive director of the Coalition to Stop Gun Violence (CSGV). I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of 47 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

As this committee considers so-called "Stand Your Ground" laws that have been enacted in 27 states,<sup>1</sup> Members should understand that such legislation is an extreme departure from former concepts of self-defense in these jurisdictions, which typically included a "duty to retreat" from violence if possible.

**The Evolution of Self-Defense Law**

Laws and statutes dictating appropriate responses to potential danger have been around since biblical times.<sup>2</sup> The Hebrew Bible describes a duty to retreat from violence. There were, however, exceptions to the rule, such as when one's home was burglarized at night.<sup>3</sup> That said, there was never *any* glory in taking another life, even if the killing was not criminal in intent.

The American duty to retreat originated in the English common law, which required an individual claiming a defense of justifiable homicide to prove he retreated "to the wall" in order to avoid conflict and that deadly force was necessary "in order to prevent his own death or serious [bodily] injury."<sup>4</sup> The English duty to retreat was premised on the concern that the right of self-defense could potentially evolve into a right to murder. In his famous treatise "Commentaries on the Laws of England," William Blackstone wrote, "The law requires, that the person, who kills another in his own defence, should have retreated as far as he conveniently or safely can, to avoid the violence of the assault, before he turns upon his assailant; and that, not fictitiously, or in order to watch his

<sup>1</sup> Law Center to Prevent Gun Violence, *Shoot First: Laws Policy Summary* (July 18, 2013) <http://smartgunlaws.org/shoot-first-laws-policy-summary/>

<sup>2</sup> Horwitz, Joshua, and Casey Anderson. *Guns, Democracy, and the Insurrectionist Idea*. Ann Arbor: University of Michigan, 2009. Pg. 209.

<sup>3</sup> Id. See also Exodus 22.

<sup>4</sup> Michelle Jaffe, *Up In Arms Over Florida's New "Stand Your Ground" Law*, 30 Nova L. Rev. 155, 160 (2005).



opportunity, but from a real tenderness of shedding his brother's blood. And though it may be cowardice, in time of war between two independent nations, to flee from an enemy; yet between two fellow subjects the law countenances no such point of honour: Because the king and his courts are the vindices injuriarum, and will give to the party wronged all the satisfaction he deserves."<sup>5</sup>

Blackstone's comment reflects two principles embodied in the duty to retreat; the value of human life and the importance of having an impartial arbiter resolve disputes. A victim of attack clearly has an important interest in protecting his life. The duty to retreat also recognizes the value of the alleged assailant's life. Finally, the duty to retreat extols the virtues of courts of law, and expresses faith in their ability to redress the injuries of victims. The duty to retreat acts to balance the competing interests of the alleged assailant and the victim.

The "Castle Doctrine" is an exception to the general duty to retreat that allows an individual to use deadly force without retreating when attacked in his home. Many trace the origin of the Castle Doctrine to English common law, and, more specifically, to Sir Edward Coke in *Semayne's Case* (1604). In *Semayne's Case*, Lord Coke stated, "For a man's house is his castle...for where shall a man be safe, if it be not in his house?"<sup>6</sup> William Blackstone wrote that, while in the home, the dweller has special rights, "and the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity."<sup>7</sup>

#### The Impact of "Stand Your Ground" Legislation

In American jurisprudence, an individual is allowed to use force to protect himself and/or others from the use of force by an assailant.<sup>8</sup> Traditionally, individuals are required to use proportional force for their protection and generally may not exceed the amount of force they reasonably believe is necessary to defend against attack.<sup>9</sup> The use of *deadly* force is typically justified when it is necessary to prevent death or serious bodily injury to a victim or a third person.<sup>10</sup> Individuals have traditionally been required to retreat, when reasonable, before resorting to deadly force.<sup>11</sup>

This equation has been dramatically altered by "Stand Your Ground" laws. Utah adopted the nation's first law permitting the use of deadly force in self-defense in public

<sup>5</sup> Jeannie Suk, *The True Woman: Scenes From The Law of Self-Defense*, 31 Harv. J. L. & Gender 237

<sup>6</sup> Heidi Reamer Anderson, *The Mythical Right to Obscurity: A Pragmatic Defense of No Privacy in Public*, 71 S. J. L. & Pol'y for Info. Soc'y 543, n.60 (2012).

<sup>7</sup> 4 William Blackstone, *Commentaries on the Laws of England* 223 (1765-1769).

<sup>8</sup> J.P. Neyland, *A Man's Car is his Castle: The Expansion of Texas' "Castle Doctrine" Eliminating the Duty to Retreat in Areas Outside the Home*, 60 Baylor L. Rev. 719, 721 (2008).

<sup>9</sup> 6 Am. Jur. 2d Assault and Battery § 52

<sup>10</sup> Kenneth W. Simons, *Self-Defense: Reasonable Beliefs or Reasonable Self Control?*, 11 New Crim. L. Rev. 51, 52-53 (2008).

<sup>11</sup> Neyland, *supra* at 721.

with no duty to retreat in 1994.<sup>12</sup> Though “standing one’s ground” was not unknown before Utah’s statute—a few states limited the duty to retreat in common law<sup>13</sup>—no state statute affirmatively advertised an individual right to use lethal force without a duty to retreat.

Florida enacted its “Stand Your Ground” law in 2005. A model law bearing many similarities to the Florida statute was then developed by the National Rifle Association (NRA) and the conservative American Legislative Exchange Council (ALEC). Since 2005, 25 additional states have adopted part or all of the ALEC model law.<sup>14</sup>

Prior to the enactment of Florida’s “Stand Your Ground” law in 2005, the state’s self-defense law was a combination of statutory and common law. Under Florida Statute § 776.012,<sup>15</sup> an individual was justified in using deadly force in self-defense “if he or she reasonably believe[d] that such force [was] necessary to prevent imminent death or great bodily harm.” Florida common law established the duty to retreat when an individual was attacked outside of his home. In 1907, the Florida Supreme Court acknowledged in *Danford v. State* that “it is the duty of a party to avoid a difficulty which he has reason to believe is imminent, if he may do so without exposing himself to the apparent risk of death or great bodily harm.” The court also noted that the duty to retreat does not apply to “a man assaulted in his own house.” In 1987, a Florida district court declined to extend the Castle Doctrine to individuals attacked in an automobile.<sup>16</sup>

Florida’s “Stand Your Ground” statute removed an individual’s duty to retreat in “any [public] place where he or she has a right to be,” and expanded the justifiable use of deadly force to include scenarios where an individual is *not* in “reasonable” fear of death or great bodily harm.<sup>17</sup> By permitting an individual to respond to force with deadly force to prevent the commission of a forcible felony, the statute erodes the principle of proportionality in self-defense. Forcible felonies in Florida include robberies where an individual’s life is not in danger.<sup>18</sup>

In conjunction with Florida statute 776.032, “Stand Your Ground,” can also prevent shooters from ever having to face any meaningful review of their actions by a jury. Statute 776.032, in pertinent part, reads:

<sup>12</sup> Law Center to Prevent Gun Violence, *Shoot First Laws Policy Summary* (July 18, 2013)

<http://smartgunlaws.org/shoot-first-laws-policy-summary/>

<sup>13</sup> E.g. NM UJI 14-5190; CALCRIM 3470; *State v. McGreevy*, 17 Idaho 453 (1909); *State v. Redmond*, 150 Wash.2d 489, 78 P.3d 1001 (2003).

<sup>14</sup> *Id.* (Ohio, Missouri, North Dakota and Wisconsin’s “Stand Your Ground” laws apply only when the shooter is in a vehicle.)

<sup>15</sup> FLA. STAT. § 776.012 (2004).

<sup>16</sup> *Baker v. State*, 506 So. 2d 1056, 1059 (Fla. 2d Dist. Ct. App. 1987). *See also Reimel v. State*, 532 So. 2d 16, 17 (Fla. 5th Dist. Ct. App. 1988).

<sup>17</sup> FLA. STAT. § 776.013(3) (2005).

<sup>18</sup> FLA. STAT. § 776.08 (2005). *See also* FLA. STAT. § 812.133; FLA. STAT. § 812.13.

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force ... (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

A study by Texas A&M economists revealed that not only do "Stand Your Ground" laws fail to deter violent crime, they are also correlated with an increase in homicides<sup>19</sup> — with up to 700 more people killed per year across 23 states studied.<sup>20</sup> Florida law enforcement agencies reported an average of 12 justifiable homicides per year committed by civilians from 2000-2004 before "Stand Your Ground" went into effect.<sup>21</sup> From 2006-2010, that number jumped to 36 per year, an increase of 200 percent.<sup>22</sup>

#### Federal Implications

The combination of proposed federal legislation to make it easier to carry firearms in public with "Stand Your Ground" laws is a cause for concern.

In 2012, the "National Right-to-Carry Reciprocity Act"<sup>23</sup> and the "Respecting States' Rights and Concealed Carry Reciprocity Act"<sup>24</sup> were introduced in the U.S. Senate. These bills would have forced nearly every state to accept concealed handgun permits issued by other states, even when the permit holder could not qualify for a permit in the state in which he was traveling. This is especially troubling because a majority of states allow individuals to carry concealed weapons with little or no instruction in the actual use of firearms or the self-defense laws of other states.<sup>25</sup> National concealed carry reciprocity could lead to confusion and potentially deadly consequences should individuals from "Stand Your Ground" states travel to states that preserve the duty to retreat.

<sup>19</sup> Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf)

<sup>20</sup> Shankar Vedantam and David Schultz, 'Stand Your Ground' Linked To Increase In Homicides, NPR January 2, 2013 <http://www.npr.org/2013/01/02/167984117/-stand-your-ground-linked-to-increase-in-homicide>

<sup>21</sup> Christopher L. Smith, *Self-defense deaths in Florida have increased dramatically since 'stand your ground' became law in 2005*, lawmaker claims, Politifact Florida, March 21, 2012 <http://www.politifact.com/florida/statements/2012/mar/26/christopher-l-smith/sen-chris-smith-claimed-deaths-due-self-defense-fl/>

<sup>22</sup> Id.

<sup>23</sup> National Right-to-Carry Reciprocity Act of 2012, S. 2188, 112<sup>th</sup> Cong. (2012). <http://www.govtrack.us/congress/bills/112/s2188/text>

<sup>24</sup> Respecting States' Rights and Concealed Carry Reciprocity Act of 2012, S. 2213, 112<sup>th</sup> Cong. (2012). <http://www.govtrack.us/congress/bills/112/s2213/text>

<sup>25</sup> Law Center to Prevent Gun Violence, *Concealed Weapons Permitting Policy Summary* (May 21, 2012) [http://smartgunlaws.org/concealed-weapons-permitting-policy-summary/#footnote\\_17\\_5701](http://smartgunlaws.org/concealed-weapons-permitting-policy-summary/#footnote_17_5701)

**Conclusion**

As Members of this committee consider the implications of “Stand Your Ground” laws, we urge you to keep in mind the radical changes this legislation has made to state self-defense laws, and the increased violence that has resulted. “Stand Your Ground” laws greatly lower the cost of using deadly force and encourage individuals to shoot first and ask questions later. Finally, the potential combination of national concealed carry reciprocity and “Stand Your Ground” laws could further degrade civil society in America.

DREAM DEFENDERS, AHMAD ABUZNAID, LEGAL AND POLICY DIRECTOR, OCTOBER 28,  
2013, STATEMENT



October 28, 2013

U.S. Senate Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Human Rights  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Stephanie\_Trifone@Judiciary-dem.Senate.gov

**Re: Hearing on Stand Your Ground Laws**

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of The Dream Defenders and young people across Florida and the country, I want to thank you for bringing attention to one of the most pressing crises facing our communities by rescheduling the hearing on Stand Your Ground Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights for this Tuesday, October 29, 2013. This issue is relevant to the The Dream Defenders, as we are a human rights organization comprised of chapters across the state of Florida directed by Black & Brown youth who confront inequality & the criminalizing of our generation with nonviolent direct action and building of collective power in our communities.

We are comprised and led by youth of color who encounter racism and violence in their communities, classrooms, and street corners. We have come together because we believe that every life has value and must be valued, despite the messages we get from the media, the criminal justice system and far too many of our elected officials. Stand Your Ground is a fundamental obstacle in reaching a society that upholds this virtue. Dream Defenders is committed to the repeal of Stand Your Ground in Florida and has dedicated itself to passing Trayvon's Law in Florida to accomplish this, among other important goals.

Laws should make our communities safer. Yet, the reality in Florida is that Stand Your Ground laws have dramatically increased the number of justifiable homicides in the state, tripling the rate since before the law was passed.<sup>1</sup> The Trayvon Martin tragedy in February 2012 occasioned closer scrutiny of Stand Your Ground laws throughout the U.S., revealing racial bias in the application of the law. Statistics based on a database compiled by the *Tampa Bay Times* of cases in which Stand Your Ground was raised as a defense in Florida since the passage of the law show that a defendant who killed a white person was two times more likely to be convicted of a

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crime than when a defendant killed a black person<sup>ii</sup>. That is to say, in cases where a white victim was killed, defendants were convicted 43.5% of the time. In cases where a black victim was killed, defendants were only convicted 21.8% of the time. Combined with the proliferation of concealed weapons permits and systemic racial bias in the U.S. criminal justice system, Stand Your Ground laws make it more dangerous for a person of color to walk down the street. What's worse, the blanket immunity provision in the law completely denies a victim of violence an adequate opportunity for redress.

Stand Your Ground laws place minimal restrictions on the use of deadly force. Again, when considered together with the ability to carry concealed weapons, this creates a dangerous dynamic. Unarmed victims were attacked in 68.9% of all Florida cases where defendants claimed a Stand Your Ground defense.<sup>iii</sup> Furthermore, in 70 cases (29.8%) the defendant pursued the victim. This data also demonstrates that Stand Your Ground can unnecessarily escalate conflicts because there is no duty to retreat when possible to avoid a confrontation. Of the 235 Florida cases collected in the *Times* database as of August 2013, the defendant could have retreated to avoid the conflict in 135 cases (57.4%).

The overbroad language of the statute and lack of guidance on what use of force is considered "reasonable" have caused much confusion for law enforcement and courts. As a result, the law has been inconsistently applied, producing unjust results. The Marissa Alexander case is emblematic of this problem. Marissa Alexander was an African-American woman from Jacksonville who fired warning shots into the ceiling during a dispute with her abusive husband. Though no one was injured in the confrontation, she was not granted protections under a Stand Your Ground defense, and the jury convicted her on three counts of aggravated assault with a deadly weapon, for which she received a 20-year sentence due to mandatory minimum sentencing laws.

Another particularly egregious example of how the overbroad language of the statute can create chaos in our courts and classrooms. Recently, Florida's 4<sup>th</sup> District Court of Appeals applied Stand Your Ground principles to a school bus fight, calling into question the ability of schools to enforce their own Codes of Conduct and create environments that foster safe and effective learning environments.<sup>iv</sup> The court's ruling may be an invitation for other young people to turn to violence rather than productive means of working out their problems. While we know sending a young student to jail is not a productive solution, codifying physical violence doesn't make our schools safer, either. That is why we are not only asking for a repeal of Stand Your Ground laws in Florida, but also calling for implementation of real solutions like Restorative Justice that have been proven to make schools and communities safer by giving young people the tools to resolve conflicts without violence.

Even prosecutors and law enforcement leaders have voiced concerns over the application of Stand Your Ground laws.<sup>v</sup> An advisory group from the National District Attorney's Association met in 2007 and issued a report that concluded, in part, that among the negative consequences of Stand Your Ground-type legislation were a "misinterpretation of physical clues that results in the use of deadly force, exacerbating culture, class, and race differences," and a "disproportionately

negative effect on minorities, persons from lower socio-economic status, and young adults/juveniles.”

Given the strong body of evidence against these laws and urgency created by the Trayvon Martin tragedy, we knew we had to act. Just days after the Trayvon Martin verdict was issued, the Dream Defenders began a sit-in at Florida Governor Rick Scott’s office in the Florida Capitol. For 31 days and 30 nights we slept on the hard marble of the Capitol floor. Governor Scott’s indifference to our presence, our communities’ struggle, and his continued support for the dangerous principles in Florida’s Stand Your Ground law only served as further catalysts for action. Along with allies across the state, country and globe, we called on the Governor to convene a special session and pass Trayvon’s Law, which would repeal Stand Your Ground, ban racial profiling and end Florida’s School-to-Prison Pipeline.

Since the Governor refused to acknowledge the urgent crisis we face, convene a special session or listen to experts who have studied these issues and been deeply and personally impacted by them, we had no choice but to do the work ourselves. While in the Capitol, we convened a People’s Session and heard the voices that have not been heard by our elected officials in Florida. Given the role that Stand Your Ground played not only in the Trayvon Martin case, but also in creating a society where our young people have to walk the streets in fear, we felt it was vital to include testimony on Stand Your Ground that not only focused on the data, but also shed light on its human impact. Below are excerpts from that testimony:

Rashad Robinson. Executive Director of ColorOfChange

Since the verdict in Sanford, ColorOfChange and our allies have mobilized over 355,000 people to join the movement to end so-called Stand Your Ground or shall I say Shoot First Law. Nearly 12,000 of those folks have signed our petition right here in Florida, and we intend to engage our Members to stand with you as you fight for Trayvon’s Law. But these signatures are not pieces of paper. They’re the voices and stories and experiences of people who are demanding that our policies put the lives and safety of real people before the desires of the corporate gun laws. They are the voices of mothers, black mothers telling us the fears they have for the safety of their sons and daughters. They are the voices of young people who will always remember where they were when they heard the verdict come down and how it sent another message about the way in which value is placed on their lives.

They’re the voices of fathers, fathers like mine who think about the talk that they have to give their sons, the talk that black fathers dread, wondering when the right time is to tell their boys about how the safety in the world -- how to stay safe in a world that has little respect for young black men. And they are the stories of good people of all races and all classes outraged by the verdict in Sanford and committed to doing something to end a set of laws written by corporations and their lobbyists who have a single goal; to sell more guns and make more money.

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... This is not a law that's intended to make us safer in our communities. It's not intended to support and help law enforcement, and it has real-world consequences. When you overlay Stand Your Ground with racism and discrimination, the justice system is not there. If racism and discrimination is the gunpowder, Stand Your Ground is the match ... Stand Your Ground was at play in [the Trayvon Martin] case and that Stand Your Ground will be in play across the country unless we seize this moment, this moment when people are outraged and they want something systemic to do, something that's going to have real consequence five or ten years down the line for how we get to live and feel safe in our communities. So this is an opportunity for us to do just that.

Bethany Spagnola. Bethany lost a close family friend in a tragic incident three days after his 21<sup>st</sup> birthday where he was shot after he went to the wrong house. Rather than waiting for the police to arrive after he had called them, the shooter took matters into his own hands and was not criminally prosecuted. The loss of life and suffering that Bethany felt is no different than the hundreds of other cases that have gone without justice since the passing of Stand Your Ground.

I can't promise you that I won't cry. Okay, my name Bethany Spagnola. I'm going to shed light on a story that you probably didn't hear about. There was very few unbiased articles written. There was no trial. There was no protest. There was no marches. It's the story of whom I consider my little brother, Sandy Newstedt.

... Growing up Sandy was never a bad kid. To this day, there's only one bad mark on his record, and that was holding a beer at 19, which he was actually holding for me. ... But after the death of a close friend, Sandy sunk into a great depression. No matter many attempts that I had to get him out of the situation, he was convinced he could do it alone and I had no choice but to let him. ... It wasn't before long that he checked himself into rehab, which while I was extremely disappointed, I was at the same time very proud of him because it takes a lot to be that young and to decide to take such a step in the right direction to get help.

... By the time he got out of rehab, I had a newborn baby and was so wrapped up in balancing my new role as a mother that it was very difficult for me to provide the attention to Sandy, but we kept in constant contact and I knew that he was doing amazing. He decided to attempt to go back to college in the fall ...

Coming back to a friend's house that night after a night on the town, Sandy stayed outside while his friends went into the home ... With nothing but the stars to light his path and feeling the aftermath of having his first drink in months at his birthday celebration, Sandy turned back to meet his friends and became disoriented, which is easy to do in such a neighborhood that is not only unfamiliar but known for its tree laden dirt road paths.

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... Obviously confused, Sandy stumbled up to what he thought was his friend's house, reaching for the doorknob, only to realize it was locked. Surely his friends were playing a rude joke on him. Finding the fact that he was locked out not funny in any sense, Sandy began to knock on the door calling for them to let him in. ... While Sandy stood outside trying to get into what he thought was his friend's house, the homeowner followed his call to the police up with going into his safe and grabbing his handgun. Assuming that it was a potential intruder who was looking to rob him, the man stated well thereafter the event that he was in fear for his life. It wasn't long thereafter making that phone call to the authorities that this man decided to take the situation into his own hands and open up the door to this intruder which he was banging against. Stumbling in, Sandy only had enough time to get out the words "don't point that gun at me," which would be the last thing he ever said.

When the authorities arrived, Sandy was already dead from a single gunshot wound to the chest. This ended that opportunity to go back to college. He would have never gotten a chance to drive his Lexus farther than off the lot. Sandy didn't even have enough time in his short period on this earth to find his true love. He will never be a dad or go to a foreign country or meet the person he's supposed to spend the rest of his life with because that man decided to take the law into his own hands. A mother will never get to throw her son another birthday party. Friends will only be having a drink in his honor instead of his presence. And I'll never get to introduce my daughter to the only person I will have ever had the privilege to call my little brother. And why? Because this man couldn't wait an extra five minutes, because this man knew under a flawed law that he could take measures into his own hands and be protected simply because it was his word against a dead man's.

This brings me to the problem with the Stand Your Ground law. Someone can basically get away with murder. That man never sat foot in a courtroom or even a jail cell. He never felt the steel of handcuffs around his wrists or even the monetary hardship of a civil case settlement because the law blatantly states that if you were to say you feel threatened, you have the right to defend yourself with lethal force if necessary.

... I know in my heart that Sandy never meant ill-will towards anyone, let alone a complete stranger on a night that was meant for celebration, not misfortune. I try not to focus on wondering why on earth this man opened the door to the person whom he thought was there to take his life. What I have decided is to focus my energy on what positive outcomes can come from this nightmare, which is why I'm here today. There will never be true justice for Sandy, but there can be for the future of the citizens of Florida. It is time that we ... correct this ambiguous law. We are the generation that is beginning to raise children of our own. Are we supposed to raise them to be on constant high alert? Should we be afraid to let our

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kids walk to the convenience store or go celebrate their birthdays in fear that they're not going to make it back?

Rashad and Bethany's words have given us the motivation to continue on in the fight to repeal Florida's Stand Your Ground law. While Florida's legislature has yet to lend an ear to these important perspectives, we are deeply grateful for the opportunity to be heard on this issue through this Congressional forum. Dream Defenders believes strongly that the Florida Legislature must act immediately to repeal Florida's Stand Your Ground law and that our Congressional representatives should continue to bring attention to this important issue.

Thank you for the opportunity to submit testimony and for taking steps to stop the unfettered expansion of Stand Your Ground laws across this country.

Sincerely,

Ahmad Abuznaid  
Legal and Policy Director

<sup>i</sup> Washington Post, *Stand Your Ground laws coincide with jump in justifiable-homicide cases*, April 7, 2012 [http://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/gIQA52v51S\\_print.html](http://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/gIQA52v51S_print.html); Tampa Bay Times, *Five years since Florida enacted "stand-your-ground" law, justifiable homicides are up*, October 15, 2010 <http://www.tampabay.com/news/publicsafety/crime/five-years-since-florida-enacted-stand-your-ground-law-justifiable/1128317>  
<sup>ii</sup> Tampa Bay Times, *Florida's Stand Your Ground Law*, [tampabay.com/stand-your-ground-law/data](http://tampabay.com/stand-your-ground-law/data)  
<sup>iii</sup> Tampa Bay Times, *Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied*, June 1, 2012 <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>  
<sup>iv</sup> NBC Miami, *Broward Student Uses "Stand Your Ground" To Get Conviction for School Bus Fight Tossed Out*, August 14, 2013 <http://www.nbcmiami.com/news/local/Broward-Student-Uses-Stand-Your-Ground-To-Get-Conviction-for-School-Bus-Fight-Tossed-Out-219496211.html>  
<sup>v</sup> Sun-Sentinel, *Sheriff Israel breaks ranks with sheriffs on Stand Your Ground law*, August 12, 2013 <http://touch.sun-sentinel.com/#section/-1/article/p2p-77005770/>

## FRANCISCAN ACTION NETWORK, WASHINGTON, DC, STATEMENT



## FRANCISCAN ACTION NETWORK SUBMISSION ON "STAND YOUR GROUND" LAWS

Submitted to the Senate Committee on the Judiciary for the September 17, 2013 hearing by the Subcommittee on the Constitution, Civil Rights and Human Rights

Franciscan Action Network (FAN) is a national organization of Franciscan men and women, lay and religious, Catholic and Ecumenical, which provides "a collective Franciscan voice seeking to transform United States public policy related to peacemaking, care for creation, poverty and human rights." We follow the Gospel path of St. Francis of Assisi, named Patron of Peacemaking by the United Nations.

We experience great concern about the increased manufacture, sophistication and use of guns in our country, which has resulted in mass killings in recent years. We work to promote legislation that will require background checks for all gun purchases, prohibit the manufacture, sale and use of guns designed for use on the battlefield, limit the number of magazines and make gun trafficking a crime. We do not interpret the Second Amendment of the Constitution as giving approval for all citizens to purchase unlimited number and types of weapons without even submitting to background checks. We view the "Stand Your Ground Laws," not as a means to protect citizens but as a threat to the safety of women, children and men in this country. "Stand Your Ground" opens the possibility of any person to shoot and kill another person whom the shooter perceives, whether based on reality or not, to be a threat. Even if there are no witnesses, even if the person perceived to be a threat is unarmed, a shooter with faulty or hasty judgment, or with personal biases, can be justified in shooting to kill a person seen to be a threat.

"Stand Your Ground" laws have been adopted in 26 states since 2005, significantly expanding the permissible use of deadly force on our streets. Some states have given permission for anyone to carry a concealed weapon, or even be visibly armed or to carry a gun into bars, in the style of the gun-slinging Old West when firearms were far less sophisticated than they are today. As Franciscan men and women, committed to peacemaking, we deplore the image of our country as "trigger happy," whether that is promoting a military strike against Syria to punish the horrific use of chemical weapons, or refusing to enact safe gun laws, or enabling ordinary citizens to plead not guilty to murder using the justification of "Stand Your Ground" laws.

Others will make the case against "Stand Your Ground" on legal grounds. Our opposition is on moral, human rights grounds. Every person in this country has the right to life, liberty and the pursuit of happiness, not just the person with a gun. As Christians, we follow the teachings of Jesus Christ who urged his followers to follow his path of peace. As Franciscans, we follow the admonition of Francis of Assisi to not only preach peace, but to live peace, and have it first within our own hearts. As a young man, Francis dreamed of becoming a knight to fight in the Crusades, but inspired by the Person of Jesus Christ, he was converted to peacemaking. We pray for all those who place their trust in guns for security and a peaceful life. While this may seem to be a naïve argument, we maintain that evidence indicates that violence leads to violence; that the more guns there are in the hands of more people with fewer legal restraints, the higher the death toll by guns will mount in this country that we love.

We support the witnesses who will urge reconsideration of "Stand Your Ground" laws and resistance to the gun lobby's aggressive efforts to promote them.

HOWARD UNIVERSITY SCHOOL OF LAW, HOWARD LAW STUDENTS, SEPTEMBER 17,  
2013, LETTER

**Statement for the Record**

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights  
Hearing on "Stand Your Ground" Laws  
Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force  
Tuesday, September 17, 2013  
10:00am Dirksen Senate Building Room 226

Chairman Durbin, Ranking Member Cruz and Members of Congress:

After the death of Trayvon Martin, police failed to charge Martin's shooter, claiming that they could not arrest him because of Florida's Stand Your Ground law. It took public outrage and six weeks before a special prosecutor brought charges against George Zimmerman. Howard University students helped publicize the case.

As Howard law students immediately recognized, there were racial aspects to the police department and prosecutor's initial refusal to arrest or charge Zimmerman. It harkened back to a period in this country when black men and boys were killed without any judicial response. Various graduate and undergraduate students within Howard formed "Howard Students for Justice." Students used social media outlets, such as Twitter and Facebook, to inform the world about the shooting and Stand Your Ground law's racial impact. Within a few hours, our efforts helped raise awareness nationwide and gained increased media attention. Additionally, the student coalition created a two-and-a-half minute video called "Am I Suspicious" to highlight the complexity of determining reasonable fear within the context of Stand Your Ground laws. The video consisted of students dressed in hooded sweatshirts, similar to Trayvon Martin's appearance at the time of his encounter with George Zimmerman. The "Am I Suspicious" campaign challenged viewers to look beyond stereotypes of African Americans and was viewed over 350,000 times on YouTube within a week.

The campaign and coalition efforts helped illuminate discussions on the intersection of race and the application of Stand Your Ground laws. Presently, the Howard Students for Justice Facebook group is used as a forum for open dialogue concerning student perspectives on present day social justice issues. Stand Your Ground laws continue to be a recurring topic on the forum.

Stand Your Ground Laws pose a great threat to our civil rights because of the racial bias associated with invoking these laws. We object to Stand Your Ground laws because they allow civilians to act upon their unreasonable fears and use deadly force to resolve problems that should be handled by law enforcement. We live in a society of mistaken beliefs and stereotypes.

The enactment of Stand Your Ground laws allow for racial profiling and we fear that those with racist attitudes will use the law as an excuse to shoot innocent people.

Consider Trayvon Martin's situation. The teenager could not win by running away (he tried) or resisting the force against him (he tried). He was racially profiled and killed. Since many students at Howard law school look like Trayvon Martin and dress like Trayvon Martin, we feel that the Stand Your Ground laws make us vulnerable to people who might do us harm.

The Due Process Clause of The United States Constitution states that no one should be deprived of their life or liberty without having been found guilty of a crime. Stand Your Ground laws erode the legitimacy of our criminal justice system and our Constitution by placing the authority to deprive another human being of their life into the hands of untrained individuals. More lives will be lost if we continue to give untrained civilians the authority to take the law into their own hands.

In 2005, Florida became the first state to pass a Stand Your Ground law, as codified at §776.013 of the Florida Statute. There have been 130 Florida cases where parties invoked Stand Your Ground. Of these cases, more than 70 percent involved a killing, but only 28 of the cases went to trial, and only 19 of those resulted in a guilty verdict. Those numbers suggest that many individuals were able to use Stand Your Ground laws as a way to steer clear from criminal charges.

We are in favor of state legislation that will prevent future killings like Trayvon Martin's. Florida State Senator Chris Smith's legislation, for example, attempts to amend the worst aspects of Stand Your Ground and also limit vigilantism in neighborhood watch programs. We recommend that federal law enforcement agencies be required to conduct prompt, thorough and reasonable investigations of self-defense claims to ensure that Stand Your Ground laws are not used to violate civil rights or serve as a guise for unchecked vigilante violence. Civilians should not revenge wrongs that have been committed against them. Allowing civilians to act as vigilantes will continue to harm minorities and minority communities. Our friends, family members, colleagues, and our own lives are being impacted by Stand Your Ground laws.

The students of Howard University School of Law would like to thank you, Chairman Durbin, and your Committee. While this is primarily a state issue, this Committee can shed light on the injustice and also consider the equal protection challenges posed by these civil rights challenges.

Howard University was chartered in 1867 to provide academic opportunities for promising African Americans. Today, the School of Law continues to fulfill its mission by producing skilled professionals capable of achieving positions of leadership in law, business, government, education and public service. These leaders are also advocates dedicated to solving the difficult

challenges facing our communities and ensuring justice for all. In this vein, the Howard University School of Law student body submits this statement for the record to address the implications of the expansion of deadly force through "Stand Your Ground" laws.

*Please note that this submission is the personal opinion of students that attend Howard University School of Law. This submission is not an official position of Howard University School of Law or Howard University.*

Sincerely In Service,

Edward Hill  
President, Student Bar Association  
Howard University School of Law

Liliane B. Bedford  
Graduate Student Trustee  
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Amanda A. Butler-Jones  
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ILLINOIS COUNCIL AGAINST HANDGUN VIOLENCE, CHICAGO, ILLINOIS, SEPTEMBER 17,  
2013, STATEMENT



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Written Testimony of the Illinois Council Against Handgun Violence

Senate Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights, and Human Rights

"Stand Your Ground" Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force

September 17, 2013

The Illinois Council Against Handgun Violence (ICHV) is pleased to provide this written testimony to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights for its September 17, 2013 hearing, "Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force.

ICHV is the oldest and largest statewide organization in the U.S. working to prevent the devastation caused by firearms. Founded in 1975 by four suburban Chicago women concerned about the tragic consequences of handgun proliferation and availability, ICHV works on a variety of fronts to educate, raise public awareness, and build coalitions to enact change in laws and behavior. For 38 years, ICHV has been a leader among state gun violence prevention groups.

As the last state in the country to pass a concealed carry law, ICHV believes that now more than ever there needs to be a review of guns laws when it comes to self-defense. It is our fundamental belief that individuals carrying loaded concealed firearms in public places and Stand Your Ground laws are a lethal combination.

As an organization working in a city that has been plagued with violence, ICHV believes that a Stand Your Ground law allows people to think that they should take the law into their own hands and act as law enforcement officers, often with deadly consequences. In fact, a recent study done at Texas A&M University entitled, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine" found that stand your ground laws, "do not deter burglary, robbery, or aggravated assault. In contrast, they lead to a statistically significant 8 percent net increase in the number of reported murders and non-negligent manslaughters."<sup>1</sup>

<sup>1</sup> [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf)



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Colleen Daley, *Executive Director*

This was seen again in a study by the National Bureau of Economic Research, which found that between 4.4 and 7.4 additional white males are killed each month as a result of stand your ground or castle doctrine laws. The study goes on to say that these laws "raise serious doubts against the argument that Stand Your Ground laws make America safer."<sup>2</sup>

And lastly the Tampa Bay Times did a study of the Florida Stand Your Ground Law and found that, "defendants claiming "stand your ground" are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white."<sup>3</sup>

With all of this information, it is important that self-defense laws are reviewed especially since many are not found to reduce crime.

Chicago, like many cities across our nation, has a problem with gun violence -- over 500 people were killed last year alone, and more than 1,000 Illinoisans are killed each year with firearms. As we prepare to have people carry deadly weapons on our streets it is imperative that we look at any laws that have the potential to increase the death toll.

We must consider redefining self-defense statutes and look at ways to promote public safety in a meaningful, common sense manner that save lives from gun violence -- rather than this backward policy that does nothing more than promote it. We need to take this moment of pause in our nation's history, and use the opportunity presented by this Committee today, to learn from weaknesses in existing laws so we can avoid unnecessary violence and shootings on our nation's streets -- and save precious lives. I can think of no higher cause.

Simply put, ICHV believes that more guns is not -- and has never been -- the answer to the pervasive culture of violence that has senselessly claimed far too many lives in our nation. Concealed carry laws and Stand Your Ground policies are bad public policy that will lead to more death and injury and will not prevent further crime from taking place. Look no further than the studies addressed here.

<sup>2</sup> [http://www.flgov.com/wp-content/uploads/citsafety/20120913\\_secondchance1.pdf](http://www.flgov.com/wp-content/uploads/citsafety/20120913_secondchance1.pdf)

<sup>3</sup> <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>



## IOWANS FOR GUN SAFETY, DES MOINES, IOWA, SEPTEMBER 16, 2013, STATEMENT



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Written Testimony of Iowans for Gun Safety

On Stand Your Ground Legislation

Before the U.S. Senate Judiciary Committee

Sept. 16, 2013

Honorable Dick Durbin and Honorable Charles Grassley and members of the Senate Judiciary Committee,

My name is Rev. Cheryl R. Thomas and I am the Executive Director of Iowans for Gun Safety.

Last Sunday, a week ago, I was at my computer reading about various things when I came across a wonderful blog by a blind woman about the problem of perceived and assumed disability and how that limits those of us with disabilities. Just as I forwarded that article on to friends, my husband walked into the room with the Des Moines Register and the headline story that has since sparked conversation around the world, "Iowa Allows Blind to Carry Guns in Public." As the Executive Director for Iowans for Gun Safety, I am well versed in the issues surrounding guns and public safety but I am also a disabled woman who knows all too well the debilitating effects of perceptions and assumptions that limit our lives as disabled people. In response to this story, we drafted the following nuanced position.

"STATEMENT ON VISUALLY IMPAIRED IOWANS AND CONCEAL AND CARRY PERMITS: Iowans for Gun Safety supports the right of a blind person to have a gun in their own home. We at Iowans for Gun Safety support the right of blind Iowans to purchase a gun and use that gun in their own home or on a firing range. However, we disagree with the current law and the interpretation of "shall issue" that would allow the visually impaired to have a conceal and carry permit to carry a gun in public without proven proficiency. Common sense dictates that this is not good legislation. The problem with this law is compounded by the lack of an in person training or certification process to gain a conceal and carry permit. The current free online course that takes about twenty minutes is wholly inadequate to address this situation and many others. Because almost 40 states have similar "shall issue" laws we have effectively tied the hands of our law enforcement and placed dubious "rights" above public safety. How can we expect our law enforcement to be responsible for public safety when we do not let them use common sense to determine public safety. As a woman with disabilities I understand that perceptions of a disability can be wrongfully used to limit people. However, common sense also must be used in each situation and the Iowa legislature needs to return the power to use discretion back to Sheriff's in our state by returning the law to "may issue." As an American Public we have been asleep at the wheel when it comes to public health and safety. This situation illustrates the need for a review of our current laws in light of common sense.

In Summation:

Iowans for Gun Safety opposes the current use and further expansion of "Stand Your Ground" legislation. Although Iowa does not have "Stand Your Ground" legislation, the interpretation of the "Castle Doctrine" in Iowa has been very liberal in claims of self-defense. In 2010 Iowa for the first time, became a "shall issue" state. Prior to "shall issue" relatively few Iowans availed themselves of the opportunity to conceal and carry. That changed dramatically in 2010 when the law was changed from "may" issue to "shall issue." This combined with the lack of stringency in certification requirements has made Iowa particularly vulnerable to having people who are by common senses unqualified, publically carrying weapons. This is best illustrated by the fact that visually impaired people are now receiving conceal and carry permits in Iowa without any type of proof of ability to use those weapons in a manner that will keep the public safe.

INSTITUTE FOR POLICY INNOVATION, LEWISVILLE, TEXAS, TOM GIOVANETTI,  
PRESIDENT, AUGUST 13, 2013, LETTER



August 13, 2013

The Honorable Richard J. Durbin  
United States Senate  
Washington, DC 20510

Dear Senator Durbin,

I am in receipt of your letter of August 6, which is a thinly veiled attempt at political intimidation and an attack on the freedom of speech and freedom of association of those who choose to become involved with the American Legislative Exchange Council (ALEC). Your letter has been widely recognized as such not only by its recipients and by the Wall Street Journal, but also by the Chicago Tribune.

If freedom of speech and freedom of association mean anything, they mean that we don't have to answer to you about our speech and about our associations.

The American people have had enough of bullying and intimidation from the Government Class. You have lost track of your commitment to the Constitution and you have lost touch with those you claim to serve. Today, the Government Class lords over the private sector as rulers, rather than as "public servants." You look after your own interests such that the Government Class has higher incomes, better benefits, and greater job security than those who toil to fund your extravagance and whom you have placed on the hook to bail out the unnecessary programs and unfunded benefits that you have secured for you and yours.

And when groups such as IPI and ALEC point this out and call for a return to constitutional restraints on the size and scope of government, they incur your wrath.

You yourself directed the Internal Revenue Service to investigate specific conservative organizations, which sent a clear signal to the IRS that you wanted them to help silence conservative and Tea Party groups.<sup>1</sup> It is no surprise that you are the source of an attempt to put pressure on ALEC, a 40 year-old organization with an outstanding track record and broad membership from the peoples' elected state legislators.

At ALEC, legislators exchange ideas about how to make their state pension funds solvent, how to deliver services to their residents in the most efficient and most effective ways possible, and how to create jobs within their states.

[www.ipi.org](http://www.ipi.org)

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Meanwhile, the state you represent is financially sick and probably the most politically corrupt state in our union. You might consider investing more time and energy into cleaning up your own mess instead of violating your oath to preserve the Constitution by constraining the free speech and free association rights of your political opponents.

The Institute for Policy Innovation eagerly anticipates your September hearing, and we would very much like an opportunity to expand on this letter during the hearing. Accordingly, we are preparing our testimony now for public release. Please keep us informed as to the schedule and witness list for the hearing.

Sincerely,



Tom Giovanetti  
President

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<sup>1</sup> Rove, Karl. "Dick Durbin, the IRS, and Me". The Wall Street Journal. May 29, 2013  
<http://online.wsj.com/article/SB10001424127887323728204578513011200175592.html>

JOHN M. PHILLIPS, ATTORNEY FOR THE FAMILY OF JORDAN DAVIS, STATEMENT

*Hearing before the  
Senate Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Human  
Rights*

*On*

*“‘Stand Your Ground’ Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force”*

**Submission by John M. Phillips,  
Attorney for the family of Jordan Davis**

My name is John Phillips. I have the honor to serve as the lawyer for the family of Jordan Davis, a teen killed by a grown man who took offense to his music, his skin color and his choice of words. Michael Dunn was empowered by the Stand Your Ground law. He fired 10 times, never called police and still confidently knows there are tipped scales of justice for legal gun owners in this country.

Like my father, I am a lifelong Republican. He was from Monroeville, Alabama and my mother was from Mississippi. Like my father, I own guns. I grew up in the conservative south, even attending the University of Alabama. I worked for a stalwart member of the GOP, Representative “Sonny” Callahan while in college. I am one of the 1.1 million concealed weapon permit holders in the State of Florida. I value the Second Amendment. I am unlike many of my clients in all of those respects. In fact, it is because of the inequality of these gun laws and the inhumanity of some of those who so zealously advocate for them, I have second-guessed all of these things. Jordan’s death was the most wrongful death I have ever known.

The Second Amendment is the only Constitutional Guarantee so tightly tied to an article of commerce that it can alienate its sisters,

like the Sixth Amendment- the Right to Trial by Jury. Stand Your Ground laws hold jury trials are a nuisance to the legal gun owners' freedom. And, with Stand Your Ground, the Second Amendment plays favorites when it comes to “life, liberty and the pursuit of happiness.” It does not simply stop intruders from invading your space as the name conveys, it allows a biased population, a person with unreasonable fears based on skin color and others to “shoot first” provided they can tell the police they had the requisite fear and walk away, stepping over the body of his or her victim who cannot defend himself or herself ever again.

Some claim Stand Your Ground had “nothing to do” with George Zimmerman’s trial. That is untrue. When Florida Circuit Court Judge Debra Nelson issued the jury instructions in the second-degree murder trial of George Zimmerman, she read:

If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had ***the right to stand his ground*** and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.

Here is the jury instruction read to Florida juries BEFORE the Florida legislature’s enactment of Stand Your Ground:

The defendant cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force. The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force.

Jurors admitted confusion, both of the lawyers were admonished by the judge on the grammatical errors of improper comma placement and a half a nation wonders why Trayvon Martin could not stand his ground.

Some claim Stand Your Ground is “grounded in history.” That is also untrue. On April 19, 1775, John Parker was the captain in command of 77 members of the Lexington militia when, according to history, he issued the famous order: *“Stand your ground; don’t fire unless fired upon, but if they mean to have a war, let it begin here.”*

His legendary quote is even engraved on a monument to him on Lexington Green. One problem - he didn’t say that at all. Historians have acknowledged this quote was fabricated in the 1800s and is not accurate to 1775. Further, by Parker’s own sworn deposition, as the British troops approached, he realized that his force was greatly outnumbered. He gave his men the order to disperse- to retreat.

Even in the wildest days of the wild west, justifiable homicide was weighed by a jury of one’s peers- not a cop deciding not to arrest, not a prosecutor deciding not to charge, not a judge based on some NRA-written standard. It was a jury- a jury tasked to weigh the facts and decide right and wrong.

The right to a trial by one’s peers was one of the biggest fights of the American Revolution. When Massachusetts enacted its colonial charter in 1641, it expressly guaranteed the right to juries in criminal and civil trials despite making no mention of the right to free speech. This right was stripped from the American colonies, as American colonial judges served pleasure of the King. King George III abolished trial by jury in the colonies to ensure his power and to restrict autonomy of the colonists.

In 1777, Edmund Burke, an Irishman and member of the British Parliament, wrote, *A Letter to John Farr and John Harris, Esqrs., Sheriffs of the City of Bristol, on the Affairs of America*. In this letter, he pointed out the unfairness of recent laws passed pertaining to Britain's "rebellious colony" of America. Burke critiqued the laws because they imposed "a much deeper malignity" and carried "into execution, purposes which appear to me so contradictory to all the principles, not only of the constitutional policy of Great Britain, but even of that species of hostile justice which no asperity of war wholly extinguishes in the minds of a civilized people." Burke could echo that concern today.

Burke's rebuke was heard a year later in the Declaration of Independence. We all know how that begins, "When in the course of human events . . ." and "We hold these truths to be self-evident." Many are not as familiar with the complaints it made thereafter against those unfair and tyrannical laws the king placed on our American forefathers. Those injuries included "depriving us, in many cases, of the benefit of Trial by Jury" and "transporting us beyond Seas to be tried for pretended offences (old English spelling)," to which Burke objected. And which Stand Your Ground laws shrug away.

It is un-American to look at excused or justifiable homicide or "Stand Your Ground" laws without looking at the institution of a jury system to balance out "right and wrong." **The laws we have now take power AWAY from the jury and have become so confusing that they entirely CONFUSE the jury, making them weak.** Even the drafters of the most zealous opinions on one's Right to Stand One's Ground would be upset because we've gone from letting a jury sort things out to letting a killer's words let him be excused and justified without even one unbiased peer weighing the actual facts- not just from the "state of mind" of the killer now that he faces a life sentence.

I obtained my concealed weapons permit in 2012 after our house was burglarized. In the 4-hour class, the two “teachers” spent most of their time in the Florida state mandated class on a sales pitch, pulling out 6-8 guns hidden on their person and detailing the merits of each. They spent ample time discussing Stand Your Ground and other laws, preparing us for possible run-ins with the law and also pointing out they keep a law book they sell on the counter in their cars and homes just in case you need “quick help.” They told us the places in town where guns were not allowed and to “boycott” them. Most offensively, they taught the grey area of the law. They explained it well.

I left that class knowing many there had just shot one bullet- *the first and only bullet they might have shot in their lives and now they were about to be armed in public, filled with fear and a non-lawyer’s rendition on the law.* I hope none have a bad day and sense fear from people of a different race, creed, ethnicity or country of origin. Yet, I heard some acknowledge JUST THAT.

We are in danger. Stand Your Ground has fueled acceptance of killing. In just a few hours, a gun store named “Shooters” took 100 or so people and further instilled fear and empowered them to not only defend themselves, but to arm themselves with enough “reason” to get away with it. In Florida alone, 10,000 to 15,000 more are undergoing this training each month and they soon will be Standing Their Ground, harnessing this fear to justify killing without consequence of a fair judgment by their peers.

I will end stating this- Jordan’s life and the lives of all of our children have the power of the butterfly effect- to trust that the flapping of his wings as he ascends into Heaven will open one mind. Mine, was one of the first. I humbly beg you to hasten the winds and create a tsunami. Pandora’s box of guns and crime, hate and bigotry is wide open in our Great nation. Only the combined winds of love and understanding, passion and hope can close it.



Thank you for your time and God Bless the United States of America.

ONE MILLION HOODIES MOVEMENT FOR JUSTICE, AMY FRAME, NATIONAL  
LEGISLATIVE DIRECTOR, OCTOBER 29, 2013, STATEMENT



**TO:** Honorable Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

**FROM:** Amy Frame, National Legislative Director, Million Hoodies Movement for Justice

**SUBJECT:** Subcommittee Hearing on Stand Your Ground Laws

**DATE:** October 29th, 2013

On behalf of Million Hoodies Movement for Justice I would like to thank the Subcommittee for this opportunity to submit these comments on the topic of Stand Your Ground Laws and their impact on public safety and civil rights.

**About Million Hoodies Movement for Justice**

Million Hoodies Movement for Justice is a multiracial alliance of concerned citizens, civil society organizations, and community leaders who are alarmed at the unprecedented levels of unrestrained violence directed at young people of color in the United States of America. Formed in the wake of the shooting of Trayvon Martin, we seek to find creative solutions to end racial violence in America.

Million Hoodies Movement for Justice has over 50,000 members in every state of the union and has created a national network dedicated to confronting the social and legal conditions that contribute to the senseless violence that has taken the lives of too many of our children.

While we recognize that issues of race are a primary driver to this violence, we also understand that permissive and misguided gun laws also contribute to a violent atmosphere in our communities that exacerbates this violence and creates a dangerous environment for all of America's kids. Every child in our country deserves to live in a safe community free from the fear of gun violence.

**About Stand Your Ground Laws**

Stand Your Ground Laws are extension of what is commonly referred to as the Castle Doctrine; the belief that people have the right to use deadly force to secure their homes against intruders. However, while traditional Castle Doctrine legal protections held that a shooter only has this right in their own home; Stand Your Ground does not. Instead, shooters are allowed to use deadly force anywhere they are legally allowed to be, including public streets and regardless of the presence of bystanders. Stand Your Ground statutes also remove the obligation to retreat in a conflict if it is possible to do so. Shooters may fire even when the opportunity to retreat is present. Additionally, some states allow the use of deadly force to protect property items on nominal value even when there is no imminent danger to the shooter or allow a shooter to use force upon a retreating individual. In short, Stand Your Ground allows shooters to continue to use deadly force even when an immediate threat to personal safety is not

present.

Currently, there are Stand Your Ground Laws on the books in 22 US states. This legislation has been supported primarily by the American Legislative Exchange Council that has spent millions of dollars promoting it to state legislatures at the behest of the National Rifle Association and other gun industry groups.

### **Impacts of Stand Your Ground Laws**

The effects of these laws have been devastating in jurisdictions where they have been put into force. Rather than deterring crime, Stand Your Ground statutes appear to have contributed to an increase in in shootings with no impact on the rate of the crimes that these statutes are meant to deter such as robbery or burglary. States that have Stand Your Ground laws have seen an explosion of justifiable homicide. The average increase in rates of justifiable homicides for states with these laws is 53%, with increases as high as 725% in Kentucky. States with Stand Your Ground laws have also seen an increase in the overall rate of homicides and shootings adding an additional 700 deaths nationally a year, while states without these laws have seen a slight decrease in similar crimes. While Stand Your Ground laws have not decreased the crimes they were designed to deter, they have led to a dramatic increase in the number of people willing to shoot other citizens in a conflict.

The reason for this is simple. Stand your Ground laws reduce the perceived costs for shooters when they use deadly force against other community members. These laws give gun owners the impression that shooting in a confrontation is legally permissible and they are legally protected even when they act as the aggressor during an altercation. Whether or not the law will be applied successfully in court is irrelevant, the victim has already been injured or killed and the community must bear the financial and social costs of the violence. Convicting a shooter who incorrectly applies a Stand Your Ground defense cannot bring back a victim or remove the fear created in communities where these shootings occur.

In fact, the legal regime created by many statutes makes it difficult for the justice system to effectively investigate shootings and provide justice for shooting victims. Statutes in a number of states prohibit the arrest of shooters claiming Stand Your Ground or they allow a pre-trial hearing before a judge to determine if the defense is valid. This removes juries of citizens from participating in these cases and keeps community members from participating in the justice system. It also hampers law enforcement from doing effective investigation into shootings. Additionally, some states prohibit civil actions against shooters, even when they injure innocent bystanders, or they place the burden of attorney's fees on victims and their families automatically if they bring a civil suit and lose.

The impact of Stand Your Ground laws has been particularly disastrous to communities of color. In Stand Your Ground states rate of justifiable homicide against African-Americans doubled since the passage of these laws, while it remained the same in the rest of the country. These laws allow the perception of the shooter to govern whether it is justifiable to shoot. Sadly, often these shooters perceptions are colored by racial stereotypes and prejudice.

The Stand Your Ground defense also appears to be disproportionately successful along racial lines. The most successful use of a Stand Your Ground defense is when a white male shoots a black male. When a white shooter shoots a black victim they successfully use a Stand Your Ground defense in 34% of

cases, while black shooters firing on white victims are successful only 3.3% of the time. This underscores the danger of a law that can be applied arbitrarily and can reinforce cultural or racial bias. Shootings of unarmed African-American teenagers like Trayvon Martin and Jordan Davis illustrate that shooters feel that they can justifiably shoot African-Americans even when they initiate the conflict themselves simply because they view African-Americans as dangerous or suspicious.

Additionally, the marketing and promotion of Stand Your Ground laws creates an environment that promotes fear and animosity between racial groups. The promotion of Stand Your Ground laws has centered largely on providing protection for “law-abiding” citizens against “thugs,” a cultural code word for young, African-American men. These laws are pushed as a way of protecting individuals from out of control street crime, even though street crime rates are at a historical low. In reality, the gun lobby and ALEC have used a mythology of urban crime to frighten community members into accepting a radical expansion of gun rights. The National Rifle Association has exacerbated this by its public communication strategy, doing things like selling an NRA hoodie after the shooting of Trayvon Martin and by advertising on websites that contain racist and militia content.

Stand Your Ground laws also create fear and anger within communities of color. When Americans see that unarmed black and brown teenagers can be shot on the streets with no punishment for the shooter, it sends a message that our country does not afford all children the protection of the laws in this country. This understandably terrifies many families who fear that their child will be the next victim, and creates a sense that our country simply places no value on the lives of young people of color. In the context of our larger racial history, this creates yet another hurdle for our communities as they try and work together to create safe streets and build an equitable justice system.

### **Conclusion**

Regardless of the race of the victims, Stand Your Ground laws are dangerous and damaging. It is simply wrong to allow the offensive shooting of unarmed victims based on the emotional perception of a shooter in what is often a stressful situation. We would be much better served by repealing these laws and instead concentrating on building better local police departments. By shifting the burden of self-protection to the individual, we make the entire community less safe and we leave more vulnerable individuals unprotected. Real safety comes from good law enforcement practices, not from untrained, ordinary citizens deciding to mete out justice in our public spaces. Stand Your Ground hampers good police work and it removes juries from issues of community safety. This decreases confidence in our justice system; especially in communities of color. When we reduce this confidence we erode the sense of security ordinary citizens have in public spaces and we signal to individuals that they cannot get justice when they are victimized.

It is the position of Million Hoodies Movement for Justice that Stand Your Ground laws must be rolled back in order to prevent more senseless violence. These laws are a threat to public safety and create an environment that actually makes it more difficult for communities to seek solutions to crime.

Additionally, it is unacceptable for us to allow the devaluation of the lives of young men of color. Stand Your Ground laws send exactly that message to Americans. Allowing the killing of African-Americans to go unpunished sends a dangerous message and devastates families and communities. It is also an ugly reflection on our nation and our attitudes about race. Most of all, it robs too many of our young people of their future and of the opportunity to build their lives and fulfill their dreams. It is time to lay

aside the myth of the thug and look at our gun laws and public safety policy with common sense instead of manufactured hysteria created by those who profit from the sales of firearms. The lives of our children depend on it.

Again, we would like to thank the Subcommittee for allowing this opportunity to comment and for their efforts to evaluate these laws.

Sincerely,

Amy K. Frame  
National Legislative Director  
Million Hoodies Movement for Justice

LAW CENTER TO PREVENT GUN VIOLENCE, SAN FRANCISCO, CALIFORNIA, SEPTEMBER  
17, 2013, STATEMENT



**Written Testimony of the Law Center to Prevent Gun Violence**

**Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights**

*"Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use  
of Deadly Force*

**September 17, 2013**

The Law Center to Prevent Gun Violence ("the Law Center") is pleased to provide this written testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for its September 17, 2013 hearing, *"Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force*.

The Law Center was formed by lawyers, originally as Legal Community Against Violence, in response to a horrific assault weapons massacre at a law firm at 101 California Street in San Francisco in 1993. After mobilizing the Bay Area legal community to support enactment of the 1994 federal assault weapons ban, the Law Center began concentrating its efforts on state and local gun laws. The Law Center currently provides free assistance to state and local governments seeking to adopt or defend laws to reduce the more than 100,000 gun-related deaths and injuries that devastate American communities each year nationwide.

As set forth below, so-called "stand your ground" laws significantly threaten public safety because they frustrate the ability of law enforcement to prosecute criminals, encourage vigilante behavior, and deprive victims of remedies. Because such laws are most dangerous when coupled with weak laws governing the carrying of concealed weapons in public, Congress should avoid enacting any new federal legislation that would force states to recognize concealed weapons permits issued in other states.

**FLORIDA'S "STAND YOUR GROUND" LAW AND ITS DEADLY CONSEQUENCES**

In 2005, the State of Florida adopted its now infamous “stand your ground” law (also known as a “shoot first” law) despite widespread public opposition. The statute, which was promoted by the National Rifle Association as part of its ongoing efforts to weaken gun laws across America, radically expanded the circumstances under which an individual claiming self-defense could avoid criminal and civil liability for the use of deadly force in public.

Under traditional legal principles – which have been in effect in America for centuries – people have the right to defend themselves through the use of deadly force in the home, and outside the home if their safety is threatened and they cannot escape the situation. The Florida law, however, dramatically departed from these well-established legal principals by allowing a person to use deadly force in a public place in self-defense, even if such force could be avoided by the person’s retreat.

The Florida law contains other dangerous provisions. First, law enforcement agencies are prevented under the statute from arresting a person who claims the use of deadly force in self-defense without probable cause that the force used was unlawful. Second, the law may be invoked by: 1) a criminal defendant in a pretrial hearing and/or at trial to avoid all criminal liability; and 2) a defendant in a civil lawsuit at any time during the proceedings to avoid all civil liability.

The Florida statute gained national notoriety in 2012 after George Zimmerman shot and killed 17-year-old Trayvon Martin as the unarmed teen walked home from a nearby 7-Eleven in Sanford. The facts are well known. Zimmerman, a neighborhood watch volunteer, had told police in a 911 call from his car that Trayvon looked “real suspicious” because he was “just walking around looking about.” Zimmerman had been issued a state license to carry a concealed weapon - even though he had been previously arrested for battering a law enforcement officer and had been the subject of a domestic violence restraining order - and was carrying a hidden, loaded handgun. Zimmerman pursued Trayvon, despite the 911 dispatcher’s statement that Zimmerman did not need to do so, ultimately shooting and killing the teen.

Zimmerman claimed that he was acting in self-defense and sought cover under Florida’s shoot first law. In response to a national outcry when the Sanford Police Department initially failed to

charge Zimmerman with any crime, the Department finally charged him with second-degree murder on April 11, 2012. On July 13, 2013, a jury found Zimmerman not guilty. The jury had received instructions from the court on Florida's stand your ground law and one of the jurors subsequently stated that the jury had found the law applicable to Zimmerman.

The Trayvon Martin case demonstrates that shoot first laws significantly threaten public safety, encouraging people to take the law into their own hands and act as armed vigilantes, often with deadly consequences. Shoot first laws also have a profound impact on the criminal and civil justice systems, tying the hands of law enforcement and depriving victims of remedies by providing blanket immunity from criminal prosecution and civil lawsuits to individuals who claim they were acting in self-defense.

The Tampa Bay Times has analyzed the Florida law extensively and documented its deadly impact. The Times' 2010 investigation found that the Florida law had been invoked in at least 93 criminal cases involving 65 deaths, including "deadly neighbor arguments, bar brawls, road rage - even a gang shoot-out - that just as easily might have ended with someone walking away." A follow-up investigation in March of 2012 increased the total number of cases in Florida to 130, finding that "[i]n the majority of the cases, the person who plunged the knife or swung the bat or pulled the trigger did not face a trial. In 50 of the cases, the person who used force was never charged with a crime." That investigation also found that "justifiable homicides" reported to the Florida Department of Law Enforcement had increased threefold since the law went into effect.

Another Tampa Bay Times report, released June 1, 2012, found that Florida's shoot first law had "stymied prosecutors and confused judges," and been used "to free killers and violent attackers whose self-defense claims seem questionable at best." That report found that nearly 70 percent of those who had invoked the law had gone free. The Tampa Bay Times continues to evaluate "Shoot First" cases. As of August 10, 2013, the newspaper had identified over 200 such cases. Of the cases involving a fatality, 44 had resulted in convictions, while 75 deaths had been found to be justified.



**MOST STATES NOW HAVE “STAND YOUR GROUND” LAWS**

Unfortunately, the gun lobby has aggressively promoted shoot first laws nationwide and a majority of states now have laws similar to the dangerous law in effect in Florida. Efforts to advance shoot first laws accelerated after Florida adopted its law in 2005 when the conservative, corporate-funded American Legislative Exchange Council (ALEC) adopted a model law bearing many similarities to Florida’s law. The ALEC model was developed in conjunction with the NRA, which has funded ALEC for years and, until 2011, co-chaired the council’s Public Safety and Elections task force that developed the model shoot first law.

After widespread outcry and the loss of a number of major corporate sponsors following the death of Trayvon Martin, ALEC announced in 2012 that it was disbanding the Public Safety and Elections task force. The NRA, however, shows no signs of ceasing its efforts to convince states to adopt dangerous, expansive shoot first laws nationwide.

Since 2005, 26 states (including Florida) have adopted either part or all of the ALEC model law, allowing people to use deadly force in self-defense in public, even if it can be avoided, and providing blanket criminal and civil immunity. These states are:

<b>Alabama</b>	<b>Michigan</b>	<b>Oklahoma</b>
<b>Alaska</b>	<b>Mississippi</b>	<b>Pennsylvania</b>
<b>Arizona</b>	<b>Missouri*</b>	<b>South Carolina</b>
<b>Florida</b>	<b>Montana</b>	<b>South Dakota</b>
<b>Georgia</b>	<b>Nevada</b>	<b>Tennessee</b>
<b>Indiana</b>	<b>New Hampshire</b>	<b>Texas</b>
<b>Kansas</b>	<b>North Carolina</b>	<b>West Virginia</b>
<b>Kentucky</b>	<b>North Dakota*</b>	<b>Wisconsin*</b>
<b>Louisiana</b>	<b>Ohio*</b>	

\* In these states, the statute only applies when the person claiming self-defense is in a vehicle.

Before Florida adopted its law, the State of Utah adopted the nation’s first law permitting the use of deadly force in self-defense in public with no duty to retreat in 1994. Seven additional states - California, Idaho, Illinois, New Mexico, Oregon, Virginia, and Washington – currently permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions. These states are distinct from true “Florida-

style” laws in several respects, however. For one, many of the shoot first protections established in these states may only be invoked during criminal trials, as opposed to the Florida law and the ALEC model, which enable a shooter to escape liability in a pretrial hearing. Additionally, these states do not have some of the especially onerous elements found in the Florida law, such as the provision preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful.

In Florida, Governor Rick Scott appointed a task force shortly after Trayvon Martin’s killing to review the state’s shoot first law. Although that task force concluded, in a report released on February 22, 2013, that no major changes were needed to the state’s law, a separate task force led by State Senator Chris Smith issued a report in April, 2012, recommending significant reforms, including: 1) the removal of the provision preventing the arrest of a person who claims self-defense; and 2) the elimination or limitation of immunity where the alleged attacker was unarmed or fleeing.

**“STAND YOUR GROUND” LAWS ARE PARTICULARLY DEADLY WHEN COMBINED WITH WEAK  
CONCEALED CARRY LAWS**

Shoot first laws become exponentially more dangerous when paired with laws that grant large numbers of people licenses to carry concealed firearms in public places. As noted above, Florida’s concealed handgun licensing law enabled George Zimmerman - who had been previously arrested for battering a law enforcement officer and had a restraining order issued against him - to legally carry a hidden, loaded handgun in public. Trayvon Martin would not have been killed if George Zimmerman had not been carrying a gun. Weak concealed weapon laws combined with shoot first laws create dangerous opportunities for everyday conflicts to escalate into lethal events.

Unfortunately, as a result of a three-decade campaign by the gun lobby, state laws regulating who may carry concealed, loaded handguns and where they may carry them are more permissive than ever before. Currently, thirty-seven states require law enforcement officers to issue concealed handgun licenses to individuals who meet very minimal requirements; four states even allow people to carry concealed weapons statewide without permits.

An analysis of news reports by the Violence Policy Center has identified at least 516 people, including 14 law enforcement officers, killed nationwide by individuals with concealed handgun licenses since May 2007. Given the limitations of news reports, the actual number of individuals killed by concealed handgun licensees is likely significantly higher.

The number of concealed weapons permit holders in Florida has grown dramatically since the state enacted its shoot first law. According to the Tampa Bay Times, “[a]s ‘stand your ground’ claims have increased, so too has the number of Floridians with guns. Concealed weapons permits now stand at 1.1 million, three times as many as in 2005 when the law was passed.”

**CONGRESS SHOULD REFRAIN FROM ENACTING ANY FEDERAL STATUTES THAT WOULD EXACERBATE THE IMPACT OF “STAND YOUR GROUND” LAWS**

Given the threat to public safety created by shoot first laws, Congress should resist the continued efforts of the gun lobby to make any changes to our federal gun laws that would aggravate the problem. Specifically, Congress should avoid the adoption of any law forcing states to recognize concealed weapons permits issued in other states.

Under existing federal law, each state may regulate the carrying of concealed handguns within its borders. Most states have some form of permitting or licensing requirement for concealed carry, with widely varying standards regarding who may carry concealed, what type of training is required, and where concealed carry may legally occur.

Existing law allows individual states to enter into reciprocity agreements with other states, permitting those with licenses from one state to carry concealed in any other state that is party to the agreement. Such agreements require the consent of all states involved, however. No federal law currently requires a state to recognize the validity of a concealed carry permit from another state.

Emboldened by its successes in state legislatures nationwide, the gun lobby is now pressuring Congress to adopt “forced reciprocity” legislation, however. Federal reciprocity would force states that issue concealed weapons permits to recognize every other state’s permits, eviscerating state authority to restrict who may carry guns within their borders. Importantly, nine states –

California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York, Oregon, and Rhode Island – do not recognize permits issued by any other states.

Forcing states to recognize permits issued by other states is dangerous because of the significant gap between states with strong permitting laws and states with extremely weak ones. Some states, for example, prohibit a wide variety of convicted criminals from acquiring concealed weapons permits, while others do not. In California, individuals may not acquire concealed carry permits if they have been convicted of any of a wide variety of violent or firearm-related misdemeanors, including assault, battery, and unlawful possession of a firearm in a school or government building. In Arizona, in contrast, almost anyone who has not been convicted of a felony may acquire a concealed carry permit.

With concealed carry reciprocity, states like California would be forced to allow criminals convicted of violent or firearm-related crimes – who would be unable to qualify for in-state concealed weapons permits – to carry concealed, loaded weapons in public.

In addition, in a majority of states, applicants may receive concealed weapons permits without having shown any legitimate need to carry a weapon in public. Other states afford law enforcement agencies important discretion over the issuance of concealed carry permits. For example, in New Jersey, permits may only be issued to individuals who demonstrate a justifiable need to carry a handgun. In Ohio, in contrast, law enforcement is required to issue permits to any applicant who meets minimum threshold requirements, regardless of whether the applicant can demonstrate need. Federal reciprocity would force a state to recognize permits issued to individuals with no need to carry, even if the state requires its own residents to demonstrate some sort of legitimate need.

State laws also vary greatly on the extent to which applicants must undergo firearms training and what that training must entail. For example, in Delaware, an applicant for a concealed weapons permit must complete a firearms training course that includes instruction on the safe handling and storage of firearms, conflict resolution, and federal and state laws regarding the possession of firearms and self-defense. State law requires that training also include live fire shooting exercises on a range, including the expenditure of at least 100 rounds of ammunition. In

Virginia, in contrast, an individual may complete the required firearms training course online, and may receive a concealed carry permit without ever having even touched a handgun. In Mississippi, no firearms training whatsoever is required in order to get a concealed weapons permit. Forced reciprocity would compel states that require residents to undergo extensive firearms training to allow untrained or poorly trained individuals from other states to carry concealed weapons within their borders.

On every major permitting question – who is prohibited from acquiring a permit, what kind of need an individual must show to get a permit, and what kind of training is required – good state laws would be overruled by bad ones under forced reciprocity, creating a dangerous “lowest common denominator” standard for concealed weapons permits.

Finally, federal reciprocity legislation would force states to give preferential treatment to out-of-state residents, since residents in states with restrictive standards for concealed carry would have to comply with those standards, while out-of-state residents with a concealed carry license from their home state would not. Congress should resist creating such inequities in the issuance of concealed carry permits, particularly given the threat created by the combination of lax concealed carry laws and shoot first laws.

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, OCTOBER 29, 2013,  
STATEMENT



TESTIMONY OF

THE LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW

SUBMITTED TO:  
THE U.S. SENATE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND HUMAN RIGHTS

“‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implication  
of the Expanded Use of Deadly Force”

On

October 29, 2013

**Testimony of the Lawyers' Committee for Civil Rights Under Law  
Submitted by Tanya Clay House, Director of Public Policy**

**Before the U.S. Senate Judiciary Subcommittee on The Constitution, Civil Rights and  
Human Rights**

**October 29, 2013**

**Introduction**

Senator Durbin and all the members of the Senate Judiciary here today, thank you for holding this critical hearing to examine “stand your ground” laws that have significantly and unnecessarily expanded the permissible use of deadly force. We appreciate this opportunity to express our deep concern with the civil rights implications in the expansion of self-defense laws and the increasing number of states adopting “stand your ground” laws.

The Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the behest of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For 50 years, the Lawyers' Committee has advanced racial equality in areas such as educational opportunities, fair employment and business opportunities, community development, fair housing, voting rights, environmental justice, and criminal justice. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all.

The Lawyers' Committee is committed to ending gun violence and racial profiling in the nation's criminal justice system and the protection of the right of citizens of all colors to walk the streets and sidewalks safely. The tragic killing of Trayvon Martin, the passage of Florida's and other states' “stand your ground” laws, combined with a growing sense of injustice, has sparked a national debate about racial equality in the criminal justice system. The killing of Trayvon Martin represents more than just one death and is an example of the racial disparities existing at every stage of our nation's criminal justice system.

In light of these racial disparities, the Lawyers' Committee urges Congress and all policymakers to take a close look at the purposes and effects of "stand your ground" laws being introduced and passed around the country. Further, analysis of these laws is dangerously incomplete without acknowledging the reality in which these laws are enacted, implemented, and understood. While the effectiveness of "stand your ground" laws is questionable at best, the civil rights implications are clear. These laws not only have disproportionately negative effects on people of color, but contribute to the "black as criminal" stereotype which plagues our society. In application, "stand your ground" laws have been shown to disproportionately benefit white defendants while also having the potential for real, deadly consequences, highlighted by the Trayvon Martin case itself. In light of the questionable efficacy of these laws, and civil rights concerns, we urge Congress and all policymakers to encourage the repeal and/or reform of "stand your ground" laws around the country.

### **Background**

"Stand your ground" laws are a significant expansion of the long-standing doctrine of self-defense. The doctrine of self-defense originates in English common law and has always been strongly limited by the doctrine of necessity, which imposed a general duty to retreat.<sup>1</sup> Some states adopted an exception to the general duty to retreat, called the "castle doctrine," which allowed for the use of force, even deadly force, to protect one's property and dignitary interests in one's home. Traditionally, both general self-defense and defense of one's home under the "castle doctrine" were affirmative defenses, meaning a defendant asserted the defense at trial.

The Supreme Court first sanctioned the "castle doctrine" with its decision in *Beard v. United States*.<sup>2</sup> Finding no duty to retreat in the killing of a trespasser on the defendant's property, so long as he reasonably believed it necessary to save his own life, the Court held:

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<sup>1</sup> C. Catalfamo, *Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century*, 4 Rutgers J. L. & Pub. Pol'y, 3, 504 (Fall 2007).

<sup>2</sup> *Beard v. United States*, 158 U.S. 550 (1895).



“The defendant was where he had the right to be [...] and if the accused did not provoke the assault and had at the time reasonable grounds to believe, and in good faith believed that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could retreat, but was entitled to stand his ground.”<sup>3</sup>

By the second half of the twentieth century, all jurisdictions had adopted some version of the “castle doctrine.” In the 1980s, a handful of state laws went a step further and passed laws allowing for immunity from prosecution in cases where a homeowner used deadly force against another who unlawfully and forcibly entered the person’s residence.<sup>4</sup>

The implementation of “stand your ground” laws by state legislatures occurred only in the last decade, and constitute a significant departure from the long-standing common law doctrine of self-defense. Florida was the first state to pass a “stand your ground” law in 2005.<sup>5</sup> One can speculate about the motivation of the support of such laws en masse through the strong support by the American Legislative Exchange Council (ALEC) and the National Rifle Association (NRA).<sup>6</sup> As a result of this almost decade-long campaign, more than 22 states now have “stand your ground laws” that do not require retreat from anywhere an individual has a legal right to be.<sup>7</sup>

“Stand your ground” laws constitute an unprecedented expansion of the traditional self-defense doctrine in several ways. First, “stand your ground” laws extended the castle doctrine to apply to places outside the home, such as a vehicle, workplace, or anywhere an individual has a legal right to be, thereby diminishing or eliminating the duty to retreat. Second, they create a

<sup>3</sup> Id. at 564.

<sup>4</sup> National Conference of State Legislatures, Self Defense and Stand Your Ground, <http://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx> (last visited Oct. 28, 2013).

<sup>5</sup> For analysis of many states’ Stand Your Ground laws, See Luevonda P. Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes*, 35 S.U. L. Rev. 1 (Fall 2007).

<sup>6</sup> NRA-ILA, Fortifying the Right to Self-Defense, Feb. 6, 2006, <http://nra-ila.org/news-issues/fact-sheets/2006/fortifying-the-right-to-self-defense.aspx> (last visited Oct. 28, 2013).

<sup>7</sup> These states are: Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Montana, New Hampshire, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington, and West Virginia.

“presumption of reasonableness” in favor of a defendant who uses deadly force in defense of the home or automobile, shifting the burden of proof to the prosecutor to prove that the defendant did not hold a reasonable fear of imminent death or great bodily harm. “Stand your ground” laws justify the use deadly force in situations not covered by traditional self-defense doctrine, including: those in which only property is threatened; those in which the threat is not imminent; and those situations where the person using force “reasonably believes” the threat is deadly, when in fact, it is not. This unprecedented expansion of justifiable homicide does not serve the traditional purposes of the self-defense doctrine and constitute a major departure from well-settled legal doctrine.

**“Stand Your Ground” Laws Negative Impact on Civil Rights**

*a. “Stand your ground” laws create more victims than they protect*

Defenders of “stand your ground” laws argue that the laws protect victims of violence from needless prosecution. However, research on the effects of “stand your ground” laws shows that any benefit bestowed to victims is outweighed by the fact that the laws actually *create* more victims than they protect. Further, there is no evidence that “stand your ground” laws or other expansions of self-defense laws have any deterrence effect on crimes such as burglary, robbery, and aggravated assault.<sup>8</sup> Instead, according to a recent study out of the University of Texas A&M found evidence that the passage of “stand your ground” laws lead to more homicides. Specifically, the study determined that the passage of the Texas “stand your ground” law lead to an 8% increase in the number of murders and non-negligent manslaughters.<sup>9</sup> If this holds true in other states with “stand your ground” laws, it translates into an additional 600 murders a year.<sup>10</sup> The study concludes that “stand your ground” laws either encourage more people to use lethal

<sup>8</sup> Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, 48 J. Human Resources 821, 822 (June 2013), available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

force in self-defense, and/or make it more likely that situations escalate to the use of violence in states with the laws.<sup>11</sup>

The ineffectiveness of “stand your ground” laws in deterring crime and reducing violence is compounded by the inconsistency in the way the statutes are implemented. “Stand your ground” defenses can be applied at multiple points in the investigation process. Consequently, law enforcement agencies spend different amounts of time and utilize different methods in handling incidents where a person claims a stand your ground defense. In addition, the system offers substantial discretion to authorities at every level, which is much more difficult to monitor and evaluate, and much more vulnerable to creeping bias.

“Stand your ground” laws also have the potential to confuse courts and jurors, leading to the injustice through their inconsistent application and inherent ambiguity. The trial of George Zimmerman in the aftermath of the death of Trayvon Martin provides a ready example. Police did not arrest Mr. Zimmerman immediately following the shooting on the basis of Florida’s “stand your ground” law. Later at trial, he did not affirmatively claim Florida’s “stand your ground” defense, and instead asserted self-defense as his motivation for the shooting. Nevertheless, the trial court instructed the jury about Florida’s “stand your ground” law, and jurors discussed the law in their deliberations. One juror reported after the trial that the “stand your ground” instruction was key to reaching their verdict.<sup>12</sup>

In contrast, a woman named Marissa Alexander, an African-American, was sentenced to 20 years in prison for firing a warning shot into the wall of her Florida home after an argument with her husband, against whom she had a protective order and who had been arrested twice for attacking her. Alexander claimed he was chasing her through the house, beating her, and threatening her life, a story that comes close to the ideal self-defense case “stand your ground” laws are supposed to cover. Alexander asserted the Florida “stand your ground” defense, but was denied. The judge found that she was the “aggressor,” and therefore not entitled to the

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<sup>11</sup> Id.

<sup>12</sup> Mark Follman & Lauren Williams, Mother Jones, *Actually, Stand Your Ground Played a Major Role in the Trayvon Martin Case* (Jul. 19, 2013), available at <http://www.motherjones.com/politics/2013/07/stand-your-ground-george-zimmerman-trayvon-martin>.

defense, because she left the room to retrieve her handgun during the confrontation with her husband. The inconsistencies and confusion “stand your ground” laws engender undermines faith the criminal justice system and may lead to misplaced legal entitlement to use force. There is no place for these laws in a criminal justice system meant to reduce violence and instill repose.<sup>13</sup>

*b. The negative civil rights implications of “stand your ground” laws for people of color*

The Lawyers’ Committee and many in the civil rights community have long asserted that “stand your ground” laws have a disproportionately negative effect on individuals of color, both as defendants and victims.

“Stand your ground” laws do not function even-handedly to justify homicides among blacks and whites. A recent study by The Urban Institute supports this contention.<sup>14</sup> The study found substantial evidence of racial disparities in justifiable homicide outcomes of cross-race homicides nationwide. The existence of “stand your ground” laws appears to worsen the disparity. Specifically, the study found that whites who kill blacks in “stand your ground” states are far more likely to be found justified in their killings. In states without “stand your ground” laws, whites are 250 percent more likely to be found justified in killing a black person than a white person who kills another white person. In “stand your ground” states, that number jumps to 354 percent.

The inherent ambiguity of “stand your ground” laws may increase violence and wrongful deaths based on misunderstandings, miscommunication, and racial and ethnic prejudices. The “Black-as-criminal” stereotype has been shown in several studies to cause people to perceive ambiguously hostile acts (i.e. acts that can be considered either violent or non-violent) as violent when a black person engages in these acts and non-violent when a non-black person engages in

<sup>13</sup> Benjamin Mueller, *Marissa Alexander Case Emerges as Symbol After Zimmerman Verdict*, L. A. Times, July, 20, 2013, available at <http://articles.latimes.com/2013/jul/20/nation/la-na-nn-george-zimmerman-marissa-alexander-20130717>.

<sup>14</sup> John K. Roman, The Urban Institute, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data* (July 2013), available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

these same acts.<sup>15</sup> In self-defense cases, culture acquires legal significance as the perception of a threat based on racial stereotype and may mean the difference between life and death for the victim.<sup>16</sup>

Instead of assisting law enforcement in efforts to stem crime, “stand your ground” laws have contributed to an atmosphere of vigilante justice in our society. These laws, like those in effect in Florida and other states, may allow suspected murderers immunity for conduct that goes against the fundamental goals in criminal law of deterring violence and promoting a safe and ordered society. They may also serve as a shield for unjustified or racially motivated intentional attacks. Further, in the case of Florida’s legislative history, the lack of stated need or prudent reason for such a drastic departure from the previous self-defense law calls into question whether this law is necessary or overbroad.<sup>17</sup> In light of the public interest, the benefit of these laws has not been justified, but their cost is significant. These laws suggest that, in some circumstances, it is socially acceptable to kill people of color because such actions will ultimately be viewed as reasonable and justified. This is not only bad for public safety, but also fails to achieve ultimate goal of justice and closure after crimes occur.

### **Conclusion**

The Lawyers’ Committee commends the U.S. Commission on Civil Rights on its decision to conduct a study on the possibility of racial bias in the nature, enforcement, or application of “stand your ground” statutes. We look forward to the results of that study in the coming months and call on policymakers to also examine the real and potential impacts of “stand your ground” laws.

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<sup>15</sup> Cynthia Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*. See Birt Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. Personality and Social Psychology 4, 590 (Oct 1976). See also, H. Andrew Sagar & Janet Ward Schofield, *Racial and behavioral cues in Black and White Children's Perceptions of Ambiguously Aggressive Acts*, 39 J. Personality and Social Psychology 4, 590 (Oct 1980).

<sup>16</sup> 23 U. Fla. J.L. & Pub. Pol’y 271, 301.

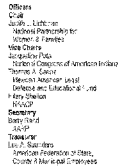
<sup>17</sup> Based on the statistics of violent crimes, immunity from prosecution seems unnecessary and overbroad in order to ensure legitimate access to one's right to self-defense. See Juan Perea et al., *Race and Races: Cases and Resources for a Diverse America* 1104 (1st ed. 2007).

While the necessity and efficacy of these laws are unsupported in empirical research, these laws place a demonstrative unfair burden on people of color in violation of their human rights. This is unacceptable as should not be tolerated in the United States.

Since its inception, the Lawyers' Committee has stood against discrimination based on race, national origin, and religion and supports the national and international movement to finally bring an end to racial discrimination in the United States. Hence, we urge policymakers not only to rescind or amend "stand your ground" laws, but the Lawyers' Committee reiterates the call to end racial profiling by law enforcement and the public alike. Federal legislation – the End Racial Profiling Act – would train, and if necessary retrain, police departments on hate crimes and racial profiling, which will help prevent more senseless harassment, arrests and ultimately killings.

Although "stand your ground" laws technically serve to provide an affirmative defense, they contribute to a culture of vigilantism in our nation and encourage the proliferation of racial bias and profiling by the public. As this country commemorates the historic March on Washington for Job and Justice and Martin Luther King Jr.'s "I Have a Dream" speech, we must not allow "stand your ground laws" to undermine this nation's progress toward a more just and equal society for all of its citizens. The Lawyers' Committee remains committed toward correcting these laws others so that our criminal justice system is truly just.

1525 K Street, NW  
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20005



Honorable Richard Durbin, Chair  
Honorable Ted Cruz, Ranking Member  
Subcommittee on the Constitution, Civil Rights, and Human Rights  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Cruz:

"Stand your ground" may vary, but they generally extend immunity to criminal prosecution or in some cases, civil suits, for the use of deadly force in self-defense beyond the home. These laws expand a longstanding and tested doctrine by which deadly force may be used in self-defense or to prevent a forcible felony when one is in the safety of one's home, to include "any other place where he or she has a right to be."<sup>1</sup> Since Florida passed the first stand your ground law in 2005, at least 30 other states have followed suit, either through legislative action or court decisions.<sup>2</sup>

The Leadership Conference has a longstanding interest in addressing a broken and racially biased criminal justice system. For example, we worked closely with Senators Durbin and Sessions in a successful effort to reduce the sentencing disparity between crack and powder cocaine, which disproportionately affected minority communities. We believe that “stand your ground” or “shoot first” laws must be looked at in the context of the criminal justice system overall and the evidence of racially-biased policing in minority communities.

In particular, The Leadership Conference has grave concerns about how “stand your ground” laws foster a “shoot first” mentality, giving individuals unfettered power and discretion with no accountability. “Stand your ground” laws make it easier for people to pursue, shoot, and sometimes kill without facing legal consequences. They essentially eviscerate any deterrent to gun-related homicides, providing a pathway to escaping any resulting penalty. In fact,

**Compliance Enforcement  
Committee Chair**  
Michael Coleman  
Auto-Erection League  
**President & CEO**  
Mark J. Henderson  
Executive Vice President & COO  
Karen McGill Lawson

October 29, 2013  
Page 2 of 3



national studies have shown that the number of homicides has increased in those states that have implemented some form of “stand your ground” laws.<sup>3</sup> Attorney General Holder characterized “stand your ground” laws as “senseless” and stated that “by allowing—and perhaps encouraging—violent situations to escalate in public, such laws undermine public safety.”<sup>4</sup>

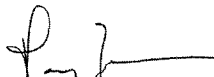
Because of systemic and unconscious racial bias, “stand your ground” laws increase the danger to which people of color are subjected, without offering adequate opportunity for redress. They can only exacerbate the harm of gun violence in communities of color, particularly in urban areas where African Americans are far more likely to die from gun violence than whites. In fact, young black men die of gun homicide at a rate of eight times that of young white men.<sup>5</sup> The tragic killing of Trayvon Martin in February 2012 brought greater scrutiny to “stand your ground” laws, revealing racial bias in their application. Statistics based on a database compiled by the *Tampa Bay Times* of cases in which “stand your ground” was raised as a defense in Florida show that a defendant who killed a white person was two times more likely to be convicted of a crime than when a defendant killed a black person.<sup>6</sup> A second study revealed that “stand your ground” laws introduce bias against black victims and in favor of white shooters. The study found that homicides with a white perpetrator and an African-American victim are ten times more likely to be ruled justified than cases with a black perpetrator and a white victim, and the gap is larger in states with “stand your ground” laws.<sup>7</sup>

The Leadership Conference urges legislation to review and examine laws, policies, and regulations with respect to “stand your ground” provisions and the discriminatory impact of their legal applications. We recommend that the Attorney General conduct a national review of state laws, policies, regulations, and judicial precedents and decisions regarding criminal and related civil commitment cases involving “stand your ground” provisions. The review and subsequent report could include a determination of whether such laws, policies, regulations, and judicial precedents and decisions place any unique or additional burdens upon minority populations; and a determination of whether such laws, policies, regulations, and judicial precedents and decisions increase the instances of racial profiling and disproportionately target African Americans or other minority communities. Finally, a report could include a set of best practice recommendations directed to state governments, including state attorneys general, prosecutors, and judicial officers, in order to ensure that laws, policies, regulations, and judicial precedents do not increase or sanction racial profiling and disproportionately target African Americans, Latinos, or other minority communities.

Thank you for your consideration of this critical issue. For further information, please contact either one of us, Lexer Quamie, or June Zeitlin at 202-466-3311.

Sincerely,

  
Wade Henderson  
President & CEO

  
Nancy Zirkin  
Executive Vice President





<sup>1</sup> Fla. Stat. § 776.013(3)

<sup>2</sup> Patrik Jonsson, *Racial bias and 'stand your ground' laws: what the data show*, Christian Science Monitor (Aug. 6, 2013), available at <http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show>

<sup>3</sup> *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine* [http://econweb.tamu.edu/mhoeckstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoeckstra/castle_doctrine.pdf) or <http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show>

<sup>4</sup> Cohen, Tom, *Holder Blasts 'Stand Your Ground' After Zimmerman Verdict*, CNN Politics, July 17, 2013

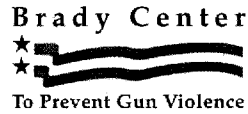
<http://www.cnn.com/2013/07/16/politics/zimmerman-holder>

<sup>5</sup> David Cole, *Who Pays for the Right to Bear Arms?*, N.Y. Times, Jan 1, 2013, at A19.

<sup>6</sup> Susan Taylor Martin, Kris Hundley and Connie Humburg, *Race plays Complex Role in Florida's 'Stand Your Ground' Law*, Tampa Bay Times (Jun. 2, 2012), available at: <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152> (hereinafter "Tampa Bay Times Article")

<sup>7</sup> In cases where the defendant was black and the victim was white, there was little difference between stand your ground states and other states (1.4% versus 1.1%). However, when the defendant was white and the victim was black, 16.9% of the homicides were ruled justified in stand your ground states and only 9.5% in non-stand your ground states. John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute (July 2013), available at: <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>; See also Patrik Jonsson, *Racial bias and 'stand your ground' laws: what the data show*, Christian Science Monitor (Aug. 6, 2013), available at p. 7 <http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show>.

BRADY CENTER TO PREVENT GUN VIOLENCE, JONATHAN E. LOWY, DIRECTOR, LEGAL  
ACTION PROJECT, OCTOBER 29, 2013, STATEMENT



TESTIMONY OF JONATHAN E. LOWY  
Director, Legal Action Project, BRADY CENTER TO PREVENT GUN VIOLENCE

ON

“‘STAND YOUR GROUND’ LAWS: CIVIL RIGHTS AND PUBLIC SAFETY  
IMPLICATIONS OF THE EXPANDED USE OF DEADLY FORCE”

BEFORE THE UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS AND HUMAN RIGHTS

October 29, 2013

Thank you Chairman Durbin, Ranking Member Cruz, and the members of the Subcommittee for the opportunity to offer my testimony. I hope it will aid in your consideration of how we can keep Americans safe and maintain a fair and effective system of justice.

I offer this testimony on behalf of the Brady Center to Prevent Gun Violence. The Brady Center is a non-profit, nonpartisan organization whose mission is to create an America free from gun violence, where all Americans are safe at home, at school, at work, and in our communities. For 24 years the Brady Center's Legal Action Project has been the nation's leading public interest law program devoted to representing victims of gun violence and defending reasonable gun laws, with the goal of reducing gun violence. Like most Americans, we believe that 100,000 people shot or killed every year with guns is unacceptable, and that stronger laws are needed to make it harder for dangerous people to obtain guns and engage in violence. For example, the overwhelming majority of Americans – including most gun owners and National Rifle Association members – support requiring Brady background checks before any gun is sold. The last thing Americans want is to relax our gun laws, or to make it harder to bring to justice those who shoot innocent people.

There are many issues concerning criminal justice about which there is reasonable disagreement, but there are some things on which we should all agree. The law should discourage violent interactions that can lead to unnecessary deaths and injuries. The law should

punish those who unnecessarily kill or injure other people, when those injuries could have been avoided.

As the death of Trayvon Martin and the acquittal of his killer demonstrated, Stand Your Ground laws turn these basic precepts upside down.

There is a fiction that Stand Your Ground laws are needed to enable people to defend themselves. That is incorrect. Before Stand Your Ground laws, criminal law included time-honored concepts of self-defense and justification that allowed people to reasonably defend themselves. However, the law also required people to take reasonable measures to avoid conflict, if that could be done safely. These principles encouraged peaceful interactions and deterred violence. The result was to make Americans more safe, and to promote justice when people were wrongfully harmed.

But Stand Your Ground laws, especially when combined with lax “shall issue” concealed firearms carrying laws, can encourage violent interactions, make Americans less safe, and make it more difficult to bring to justice those who wrongfully injure or kill. While Trayvon Martin is far from the only victim of these dangerous changes to the law, his is the most prominent case in point.

While there is disagreement over exactly what happened that night in Sanford, Florida, and whether George Zimmerman’s verdict was fair, there is much about which we should all agree:

- 1) A 17-year-old armed only with candy and a soft drink should have been able to walk home in his father’s neighborhood without being shot and killed. The fact that Trayvon Martin was killed is a bad outcome, and the law should prevent similar bad outcomes in the future.
- 2) A man carrying a loaded firearm should not feel that he is entitled or emboldened to follow and ultimately kill an unarmed 17-year-old, especially when law enforcement advise him to let police handle the matter. The fact that George Zimmerman killed Trayvon Martin is a bad outcome, and the law should prevent similar bad outcomes in the future.
- 3) A man who shoots and kills an unarmed teenager, when that could have reasonably been avoided, should be subject to some punishment. The fact that George Zimmerman would have been subject to more punishment if he had not buckled his seat belt when he drove home is a bad outcome, and the law should prevent similar bad outcomes in the future.

The fact is that were it not for Florida's Stand Your Ground Law, the killing of Trayvon Martin might well have been deemed a punishable crime under Florida law. And were it not for Florida's lax concealed carry ("CCW") laws, Trayvon Martin would likely be alive today. Stand Your Ground laws should be examined in the context of the carry laws that authorized Zimmerman to carry a loaded gun that night.

#### **Florida's Lax Concealed Carry Laws**

Before Florida's legislature listened to the corporate gun lobby and relaxed its laws regulating the carrying of loaded hidden handguns in public, a person who did not have a legitimate need or sufficient judgment to carry a loaded gun in public was not entitled to carry one; law enforcement had the authority to protect the public by preventing dangerous people from carrying guns. When Florida enacted the gun lobby's shall issue concealed carry laws, law enforcement was deprived of any role in determining whether a person posed too much of a danger to the community to warrant his carrying guns in public. Instead, if an applicant met a low threshold of certain limited objective criteria, the State was required to issue him a CCW license, even if law enforcement knew that person was dangerous and had no business carrying a gun, and no need to do so.

As a result, even though George Zimmerman reportedly had been charged with resisting an officer with violence, battery against an officer, had a motion for a domestic violence restraining order filed against him, and was diverted to an alcohol education program (all before he shot Trayvon), law enforcement had no authority to deny him a CCW license. Thus, under Florida's shall issue concealed carry law, Zimmerman was entitled to carry a loaded hidden handgun.

Indeed, even after he killed Trayvon Martin, his at best questionable conduct and judgment that night would not disentitle him to a CCW license under Florida law.

Florida's lax CCW law has enabled numerous individuals with substantial criminal records to obtain permits to carry guns in public. According to an analysis by the *Orlando Sentinel*, burglars, drug offenders, child and domestic abusers, and even individuals found responsible for homicides have obtained CCW permits in Florida. One Florida permit holder has been arrested 22 times for drug trafficking and aggravated assault, the *Sentinel* investigation revealed. The investigation also found six registered sex offenders with valid permits issued by the state.<sup>1</sup>

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<sup>1</sup> Maines, John and Megan O'Matz. "In Florida, It's Easy to Get License to Carry Gun." *Orlando Sentinel*, January 28, 2007. [http://articles.orlandosentinel.com/2007-01-28/news/MGUNS28\\_1\\_carry-a-gun-license-to-carry-concealed](http://articles.orlandosentinel.com/2007-01-28/news/MGUNS28_1_carry-a-gun-license-to-carry-concealed).

### **Florida's Stand Your Ground Laws**

Florida's enactment of the gun lobby's Stand Your Ground law ("SYG") only increased the dangers posed by its lax concealed carry laws. A Texas A&M study found that Stand Your Ground laws led to a net increase in homicide, with no evidence of deterrence of other crimes.<sup>2</sup> Another study found that SYG laws were associated with a significant increase in homicides among white males in particular.<sup>3</sup>

An analysis by the *Tampa Bay Times* found that Stand Your Ground is frequently used in Florida by drug dealers and gang members to avoid murder charges, simply on their own claims of self-defense. The Times study also found a disparate racial impact in Stand Your Ground cases; shooters went free at a 14% higher rate when the victim was black as opposed to white.<sup>4</sup>

These results should not be surprising when one considers how SYG has removed long established legal principles that previously deterred violent conduct and unnecessary killing.

Proponents of Stand Your Ground often misleadingly suggest that SYG is needed to enable people to protect themselves. Not so. The law has always recognized a right to self-defense, and a right to use force when reasonably necessary to defend one's self. But Stand Your Ground changed those long-held principles in several dangerous respects, including:

#### **Eliminated Duty to Avoid Danger in Public Spaces**

The Castle Doctrine historically allowed individuals to protect their homes and defend themselves against intruders, even if they did so by using deadly force. As you are entitled to exclude others from your home (which is, after all, your "castle"), there was a logic to not requiring you to "retreat" from home invaders. But the Castle Doctrine was narrowly confined to the home. Everywhere else you had a duty to take reasonable measures to avoid conflict, so long as your "retreating" would not subject you to danger. In Florida, for example, you had to use *every* reasonable means to retreat before you could justify the use of deadly force. This made sense, for the law should discourage violent exchanges, and public spaces are nobody's "castle." Trayvon Martin had no lesser right to walk in his neighborhood than George Zimmerman.

<sup>2</sup> Cheng, Cheng and Mark Hoekstra. "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine." Texas A&M University, forthcoming in the *Journal of Human Resources*. [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

<sup>3</sup> McClellan, Chandler and Erdal Tekin. "Stand Your Ground Laws and Homicides." Georgia State University, IZA Discussion Paper No. 6705. <http://ftp.iza.org/dp6705.pdf>.

<sup>4</sup> Martin, Susan Taylor, Kris Hundley and Connie Humburg. "Race plays complex role in Florida's 'stand your ground' law." *Tampa Bay Times*, June 2, 2012. <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152>. Source data available at <http://tampabay.com/stand-your-ground-law/data>.

Stand Your Ground laws exported the Castle Doctrine into public spaces, eliminating the duty to take reasonable measures to retreat from conflict, even if “retreat” can be done safely. Extending the Castle Doctrine into public spaces made no sense, for unlike homes, people have an equal right to be in public spaces. Telling two people that they have a right to “stand their ground” when on common ground is a recipe for conflict, and often violence. As one of the jurors in the Trayvon Martin case has said, Zimmerman was “guilty of not using good judgment” but under Florida’s new SYG law, that wasn’t enough to convict him.

#### **Creates a Presumption of Justified Fear**

Before Stand Your Ground became the law, to justify the use of force under the Castle Doctrine, a criminal defendant would have to actually show that he believed force was necessary and that his belief was reasonable. Again, there was a logic to the requirement that a defendant show that his fear was reasonable; after all, the law should not allow someone to unnecessarily shoot someone else simply because the shooter wrongly imagined that he was threatened by someone who was actually harmless.

But Stand Your Ground did away with this sensible requirement in Castle Doctrine cases. At least in certain defense of home cases, when SYG defendants use deadly force they are “*presumed* to have held a reasonable fear,” without any evidence that they were in fear, or that their fear was reasonable. As the only other witness may be dead in such cases, it often can be very difficult to rebut this presumption.

The head of the Orlando Police Department’s homicide squad explained that before SYG, when the police would go to investigate a case, they’d ask “‘where is the weapon [to justify the defendant’s fear]?’”<sup>5</sup> But after SYG, in some cases defendants’ claims that they were in fear can simply be accepted without supporting proof. As Miami Police Chief John F. Timoney recognized, “Whether it’s trick-or-treaters or kids playing in the yard of someone who doesn’t want them there or some drunk guy accidentally stumbling into the wrong house . . . [the law is] encouraging people to possibly use deadly physical force where it shouldn’t be used.”<sup>6</sup>

#### **Gives Immunity and Subjects Victims To Potential Costs**

SYG law also gives special legal protections to SYG defendants, by providing them with special immunity from criminal prosecution and civil action for the use of force that is deemed justified. Further, under SYG, courts “shall award reasonable attorney’s fees, court costs,

<sup>5</sup> Henry Pierson Curtis. “Gun law triggers at least 13 shootings.” *The Orlando Sentinel*, June 11, 2006. [http://articles.orlandosentinel.com/2006-06-11/news/DEADLYFORCE11\\_1\\_new-law-self-defense-ground-law](http://articles.orlandosentinel.com/2006-06-11/news/DEADLYFORCE11_1_new-law-self-defense-ground-law).

<sup>6</sup> Abby Goodnough. “Florida Expands Right to Use Deadly Force in Self-Defense.” *The New York Times*, April 27, 2005. <http://www.nytimes.com/2005/04/27/national/27shoot.html>.

compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution.”<sup>7</sup> That shifting of costs is wholly contrary to the standard rule in the American system of justice, in which each litigant is responsible for her own costs. By eliminating the generally accepted American rule in SYG cases, only the wealthy can afford to bring civil actions, since most people would be unable and unwilling to risk bankruptcy to bring a civil case for which victory is never certain. In short, the law makes the George Zimmermans of the world favored citizens in this important respect, makes victims’ families like Trayvon Martin’s into second-class citizens, and it deters worthwhile civil actions, thus skewing the scales of justice.

#### **Effect on the Zimmerman Case**

We may not know with certainty whether Stand Your Ground laws emboldened George Zimmerman to follow and shoot Trayvon, though they may well have, as trial testimony stated that Zimmerman familiarized himself with those laws before the incident. But it is certain that Stand Your Ground made it more difficult to bring Trayvon’s killer to justice.

Florida’s Stand Your Ground law allowed Zimmerman to avoid even facing criminal charges for six and a half weeks following the shooting of the unarmed teenager. Only a public outcry, and the appointment of a special prosecutor, led to charges being brought against him. And while Zimmerman didn’t mount an SYG defense during his eventual trial (to do so would have required him to testify), the jury instructions incorporated Stand Your Ground law. Thus, the jury was instructed that Zimmerman had the right to defend himself with lethal force if he felt threatened, and the jury did not consider whether he could have reasonably avoided the conflict. One juror said after the trial that under this instruction, she had no choice but to vote for acquittal.

Before Stand Your Ground, the jury would have been instructed that Zimmerman could not justify his use of deadly force “unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force.” Even if he was “wrongfully attacked,” his use of force would not have been justified “if by retreating he could have avoided the need to use that force.” Those instructions could have reasonably led jurors to find that Zimmerman should have remained in his car and followed the police instruction to not follow Trayvon. By choosing to follow Trayvon in the darkness he failed to “avoid the danger,” so jurors could find that he was not justified in ultimately shooting Trayvon.

Stand Your Ground removed this obligation to take reasonable measures to avoid conflict. Instead, so long as Zimmerman “was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to

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<sup>7</sup> Fla. Stat. Ann. § 776.032.

stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.”<sup>8</sup> That instruction could well have made all the difference between innocence and guilt.

As Paul A. Logli, president of the National District Attorneys Association, stated of the law, “[The ‘Stand Your Ground’ laws] basically giv[e] citizens more rights to use deadly force than we give police officers, and with less review.”<sup>9</sup>

### **Conclusion**

Today, George Zimmerman is free to walk the streets of Florida with a loaded, hidden handgun. Indeed, even after he killed Trayvon, Zimmerman reportedly threatened his wife and father-in-law with a gun. Yet there is still no legal authority in Florida to take away his concealed carry permit.

Unfortunately for the public safety of Americans, efforts by the National Rifle Association and its allies to spread Florida’s dangerous combination of Stand Your Ground and permissive concealed carry across the nation have been largely successful. Over half the states now have Stand Your Ground and shall issue CCW laws, following strong NRA lobbying that falsely claimed that such laws would make communities safer.

It is said to be a mark of insanity to do the same thing, while expecting different results. As long as Stand Your Ground laws send a message that encourages people to shoot first and ask questions later, and lax concealed carry laws allow dangerous people to carry loaded hidden handguns in public, we can expect tragedies like Trayvon Martin’s. The American public deserves better.

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<sup>8</sup> The Honorable Debra S. Nelson, Circuit Judge. “Instructions for George Zimmerman jury.” Available at <http://www.ajc.com/news/news/national/document-instructions-george-zimmerman-jury/nYnqZ/>

<sup>9</sup> Adam Liptak, “15 States Expand Right To Shoot in Self-Defense.” *New York Times*, August 7, 2006, at A1.



MILLION MOM MARCH, VIRGINIA CHAPTERS, MARTINA LEINZ, PRESIDENT, NORTHERN  
VIRGINIA CHAPTER, SEPTEMBER 13, 2013, LETTER



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The Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Human Rights  
Chairman Dick Durbin

September 13, 2013

Dear Chairman Durbin and Senate Judiciary Committee Members:

Thank you for allowing us the opportunity to submit testimony in advance of your hearing on "Stand Your Ground Laws." On behalf of the members of the Million Mom March organization in Virginia, we strongly support subjecting the "Stand Your Ground" laws to legal scrutiny at the very highest level.

We have identified five key factors which clearly illustrate why these laws are not only unnecessary and quite probably, unconstitutional, but also why they are very dangerous, serving only to justify an escalation in violence and killings.

- 1) The laws are not necessary as they are intended to right a nonexistent wrong.
  - There is no evidence that long standing laws on self defense, derived from common law, are preventing anyone from effectively defending themselves, or their loved ones, by using an appropriate level of force.
  - There is no evidence that anyone who takes such a defensive action, even deadly action, is being wrongfully prosecuted or sentenced.
- 2) The laws create both criminal and civil immunity for people who use deadly force when nothing but their own word regarding the actual circumstances surrounding the event is their defense. This immunity effectively denies the fundamental rights of legal protection afforded to the victims of such a deadly attack. This clearly violates Constitutional guarantees regarding trials and justice. Further, because it is word

against word, the message here is that if you use a gun, you better kill the person you are fighting so that only your word will prevail.

- 3) There is strong evidence, from the 26 states that have already adopted Stand Your Ground laws, that they are creating far more harm than good. Note these following facts from the 26 states:
  - The rate of “justifiable homicide” increases dramatically. Since 2005, justifiable homicides have risen by 25% in the 26 states. An individual can provoke a fight and then shoot to kill if he feels like he going to lose the fight, with no repercussions.
  - In a majority of cases where Stand Your Ground immunity is claimed, the person who resorted to deadly force has a prior criminal record. In other words the law is being disproportionately used by criminals to avoid prosecution for criminal activity.
  - In the majority of cases, the person killed was not engaged in criminal activity at the time of the altercation.
  - In the majority of cases, the person who was killed was not armed at the time.
  - There is also considerable evidence that outcomes of Stand Your Ground cases show a wide divergence in result along racial lines.
- 4) Stand Your Ground laws create “rules of engagement” for armed private citizens that are far less stringent than those which are created either for trained law enforcement or even for our military personnel in time of war!
- 5) Stand Your Ground laws tarnish the image of the United States and diminish the value of human life by allowing the indiscriminate use of deadly force in circumstances where such force is not necessary. The Trayvon Martin verdict is a tragic case in point.

Further, we recognize that it is not lost upon anyone in Congress that these laws were the outcome of an orchestrated attempt by the National Rifle Association (NRA) to create a larger market for defensive handguns. The NRA has proven time and again that it is not concerned with the safety of the American public, nor with the sentiments of its members, but rather with the financial interests of the gun industry. It is time for Congress to own up to their own culpability in allowing the maneuverings of the NRA and right this wrong by overturning Stand Your Ground laws.

Thank you for your careful consideration of this very important issue.

Respectfully,

Andy Goddard, President, Richmond, VA Chapter, Million Mom March  
Martina Leinz, President, Northern Virginia Chapter, Million Mom March

MOMS RISING, KRISTIN ROWE-FINKBEINER, EXECUTIVE DIRECTOR AND CO-FOUNDER,  
SEPTEMBER 17, 2013, STATEMENT



**Testimony of Kristin Rowe-Finkbeiner  
Co-Founder, Executive Director, MomsRising**

Hearing on "Stand Your Ground" Laws: Civil Rights and Public Safety Implications  
of the Expanded Use of Deadly Force

Hearing before the Senate Judiciary Subcommittee on the  
Constitution, Civil Rights, and Human Rights  
September 17, 2013

I am Kristin Rowe-Finkbeiner, Co-founder and Executive Director of MomsRising. MomsRising is a 1.1-million strong, online and on-the ground grassroots organization working to improve the lives and the health of American families.

We have advocated for paid family leave, flexible work options, environmental and product safety, affordable childcare, and many other policies that families need. We also support common sense gun laws to better protect our families from gun violence. That includes calling into question "stand your ground" laws that threaten to put public safety at risk and compromise civil rights.

MomsRising has a diverse national membership. And we believe, as do our members, that we can wait no longer to stop the senseless killings that have plagued our nation for far too long.

We are pleased that this subcommittee is taking the time to examine "stand your ground" laws, which we believe often contribute to the problem of gun violence in this country.

In February 2012, a teenager went to the store to pick up candy and never returned home, a nightmare scenario for parents across the country. The tragic shooting death of 17-year-old Trayvon Martin in 2012, highlighted the need to reconsider the validity and usefulness of "stand your ground" laws. Martin was an unarmed teenager who died needlessly. George Zimmerman's profiling and following of Martin, against the instructions of authorities, was uncalled for. As a group representing moms of all races and ethnicities who want to keep their children and communities safe, we abhor the shooting death of Trayvon Martin and feel strongly that "stand your ground" laws should be repealed.

At least 20 states have laws that allow individuals to use deadly force without any requirement to evade or retreat from a dangerous situation, according to the National Conference of State Legislatures. While guns rights groups see “stand your ground” laws as empowering civilians, civil rights groups see the laws as encouraging violence and as racially biased.

A recent study suggests that “stand your ground” laws lead to more deaths. The researchers at Texas A&M University found that the rates of murder and non-negligent manslaughter increased by 8 percent in states with “stand your ground” laws. That’s an additional 600 homicides per year in states that have enacted such laws. Our children’s very lives may hang in the balance.

These statistics are even more shocking when considered against the backdrop of the racial disparities in our criminal justice system. According to an Urban Institute study, when white shooters kill black victims, 34 percent of the resulting homicides are deemed “justifiable.” Only 3 percent of deaths are ruled “justifiable” when the shooter is black and the victim is white. “Justifiable” homicides are those defined by the FBI as when a private citizen kills someone who is committing a felony, such as attempted murder, rape or armed robbery.

Clearly, “stand your ground” laws can promote deadly aggression and often are applied unfairly when it comes to different races.

“Stand your ground” laws only add fuel to the fire of the nation’s simmering cauldron of gun violence. Nationally, 30 people are killed each day by guns. About one in five Americans know a recent victim of gun violence and twice as many worry about becoming a victim, according to a recent Kaiser Health Tracking Poll. Of the 20 percent of Americans who reported knowing a victim of gun violence in the past three years, 62 percent said the victim was a friend, family member or even themselves.

According to a recent New England Journal of Medicine article, guns are the second leading cause of death in young people aged 1 to 24 years old. The Centers for Disease Control and Prevention to prevent gun violence found that U.S. children ages 5 to 14 are killed with guns at a rate 11 times higher than the combined rates of 22 other populous, high income countries.

We are outraged by these statistics, by these day-in-and-day-out tragedies. We are sickened and frightened by the far-too-many American families who lose children to gun violence every year.

That’s why MomsRising and our members felt it was imperative to lend our voices to this hearing, strongly urging Congress to reconsider “stand your ground” laws. One more tragic death resulting from “stand your ground” laws or any other kind of gun violence is too many.

For months, our members – moms, dads, grandparents and others from across the country – have been writing with their stories and encouraging us to step up the pressure to reduce and even prevent gun violence in this country. While they don’t directly address “stand your ground” law,

they speak to the devastation that gun violence wreaks and those laws only perpetuate such violence. These are excerpts from just a few of the thousands of letters we have received.

G from Detroit, Michigan said:

*"I am a teacher. I have taught at-risk youth for over 15 years, including four years in a juvenile detention facility. The gun violence in this country is unspeakable. I have lost count of the children I have lost to gun violence. In schools, on the streets, in stores, in homes. It is everywhere. I dare lawmakers to walk a day in the shoes of the people who actually deal with gun violence every day. I would bet that after just one day, they would run back to DC and pass every piece of gun legislation possible. I dare lawmakers to look into the faces of the families who have lost children to gun violence, and tell them guns are just a part of the American way of life. NOT ONE MORE!"*

Baldr from Eugene, Oregon wrote:

*"In 1990, I was 18 and went to the mall to pick up a friend. Two boys I didn't know were arguing in the parking lot, surrounded by other teens who were watching and waiting for a fight. I moved in close to see what was happening, when one boy, aged 16, pulled a gun and shot the other, aged 18, in the head, killing him. The younger one fled. I tried to feel the pulse of the victim. He died as I held him. I chased down the shooter, and scared him back to the scene, where he was arrested."*

Mary from Columbia, South Carolina wrote:

*"I could tell of several family members, but I prefer to tell of my own experiences. When I was seven years of age, a large group of kids including myself were playing in front of the home in which I lived. We were playing tag and riding bicycles in the street, when right across the street in our presence, the ex-spouse of the lady that lived across the street, opened fire on the family, killing the lady, her mother and her brother. Then the man stood there with the gun in his hand. This image has never left my memory and has a lot to do with my views on having laws in place to remove, ban and take weapons out of our communities. It was later told to me, that the man purchased the weapon a couple days prior to killing this family from a pawn shop around the corner. If there were stronger laws in place, it could have changed everything. All of the children that played in the street that day with me still remember this crime like it was yesterday. Scars are forever, prevention protects. A life saved is precious and valuable, this could have been anyone's story. We all have a history with crime related to weapons. Protect our future."*

Some of the MomsRising members we've heard from are also gun owners and NRA members, and they, too, are deeply concerned about gun laws, including the "stand your ground" laws, that

fail to protect our children and our communities. It's time to answer the countless pleas for help from parents and children across the country.

When George Zimmerman was allowed to walk away free after killing Trayvon Martin, our President shared his heartfelt sentiment. "When Trayvon Martin was first shot," the president remarked, "I said that this could have been my son."

As parents, we know how vulnerable children can be. That's why, in the days before any arrest was made, MomsRising sent a member-signed letter to the Department of Justice on behalf of Sybrina Fulton, Trayvon Martin's mother, petitioning for the prosecution of Martin's killer, George Zimmerman.

MomsRising also supported the Dream Defenders, raising funds to assist them with their protests. The Dream Defenders are a group of young people who gathered at the Florida State Capitol, camped out and urged Florida Governor Rick Scott to call a special session of the Florida Legislature to address the issues at the center of the Trayvon Martin tragedy: "stand your ground" vigilantism, racial profiling, and a war on youth that paints young people as criminals. In the tradition of the 1961 Freedom Riders, these young people were pivotal in drawing attention to these important issues.

In commemoration of Trayvon Martin's death, MomsRising launched the "Moms in Hoodies: Remembering Trayvon One Year Later" project, posting photos of moms in hoodies, much like the one Martin was wearing when he was killed, on the MomsRising Facebook page. As parents ourselves, we wanted to show solidarity Trayvon's grieving parents.

All of these actions were aimed at trying to foster a more just and secure world for our families and communities. "Stand your ground" laws and the gun violence they encourage impede us from reaching this goal. It's time to take a stand against such laws. Let's prevent the creation of any more grieving parents, families or communities resulting from mindless gun violence.

We thank Senator Durbin for holding this hearing and we strongly urge all members of Congress to reconsider "stand your ground" laws. We also urge Congressional vigilance against efforts by the gun lobby to make changes to federal gun laws that will exacerbate the troubling impacts of "stand your ground" laws.

NAACP, HILARY O. SHELTON, DIRECTOR, NAACP WASHINGTON BUREAU,  
WASHINGTON, DC, OCTOBER 29, 2013, STATEMENT



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**TESTIMONY OF HILARY O. SHELTON**

*Director, NAACP Washington Bureau &  
Senior Vice President for Policy and Advocacy*

**Before the Senate Judiciary Subcommittee on the  
Constitution, Civil Rights, and Human Rights**

On

**"Stand Your Ground" Laws: Civil Rights and  
Public Safety Implications of the Expanded  
Use of Deadly Force**

*Tuesday, October 29, 2013*



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*Tuesday, October 29, 2013*

Good morning, Senator Durbin, Senator Cruz, and esteemed members of this panel. Founded more than 104 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and political advocacy arm, for over 16 years. It is fair to say that during that time, few issues have caused as much angst and raised as many deeply held concerns among our members and the communities we serve as that of "Stand Your Ground" laws. These laws, and their application, have sadly resulted in no less than the murder of people who are doing nothing more than walking down the street.

**THE SPREAD OF "STAND YOUR GROUND" LAWS**

In 2005, Florida enacted a "Stand Your Ground" law, which gives individuals the right to use deadly force to defend themselves without any requirement to evade or retreat from a dangerous situation, if they claim they felt their life was being threatened. Since that time, twenty-one additional states have adopted these "shoot first" statutes that generally permit the use of deadly force in public places with no duty to attempt to retreat. These states are, in addition to Florida: Alabama, Alaska, Arizona, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and West Virginia. Since 2005,



four states have adopted similar laws, but they apply only when the shooter is in his or her car. These four states are: Missouri, North Dakota, Ohio, and Wisconsin. Finally, seven additional states permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions. These states are distinct from true "Florida-style" laws in several respects, however. For one, many of the shoot first protections established in these states may only be invoked during criminal trials, as opposed to the Florida law which enable a shooter to escape liability in a pretrial hearing. Additionally, these states do not have some of the especially onerous elements found in the Florida law, such as the provision preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful. These seven states are: California, Idaho, Illinois, New Mexico, Oregon, Virginia, and Washington. Lastly, Utah has had a "Stand Your Ground" type law on the books since 1994, but it strengthened and clarified its law to be more in line with the Florida law post-2005.

So in total, a majority of the U.S. states, 34, currently have some type of "Stand Your Ground," also known as "shoot first" law. It is important to note that despite the current controversy surrounding Stand Your Ground laws, in 2013, so far, legislators in only seven states (Alabama, Florida, Mississippi, New Hampshire, North Carolina, Pennsylvania and Texas) have introduced legislation to weaken or repeal their shoot first laws, and no state has ever acted to in any way diminish its Stand Your Ground law. The lack of action is further exacerbated by the fact that in 2013 so far in twelve states (Alaska, Alabama, Colorado, Connecticut, Florida, Georgia, Iowa, Nevada, Oklahoma, Pennsylvania, Texas and West Virginia) legislation has been introduced which would actually establish or expand shoot first provisions<sup>1</sup>.

Ironically, in Florida, defense attorneys are using "stand your ground" in ways state legislators never envisioned. The defense has been invoked in dozens of cases with minor or no injuries. It has also been used by a self-described "vampire" in Pinellas County, a Miami man arrested with a single marijuana cigarette, a Fort Myers homeowner who shot a bear and a West Palm Beach jogger who beat a Jack Russell terrier<sup>2</sup>. For a comprehensive review of how Stand Your Ground has been used in the state of Florida, I would recommend the article, *Florida's 'stand your ground' law yields some shocking outcomes depending on how law is applied*, in the Tampa Bay Times dated June 1, 2012. For your information and enjoyment, I have attached it to my testimony (see attachment #1).

<sup>1</sup> Coalition to Stop Gun Violence, <http://csgv.org/issues/shoot-first-laws/>

<sup>2</sup> *Florida's 'stand your ground' law yields some shocking outcomes depending on how law is applied*, Tampa Bay Times, June 1, 2012 <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>

Another outcome of Florida's aggressive position is the sad, but in many ways, predictable, fact that people have started to try to use the "Stand Your Ground" law to defend themselves in cases which otherwise appear to be wanton, inexcusable, violence. A case in point is currently occurring in Titusville, Florida, where a man who shot up a neighbor's barbecue last year, killing two and injuring another, is looking to have murder charges dismissed under the state's "Stand Your Ground" law. William T. Woodward said he felt threatened on the night of the shootings because the men were yelling at him and saying they were going to "get him." Woodward "exercised his right under Florida law to defend himself and his family that night," stated his attorneys. More information on this story can be found at:  
<http://www.nydailynews.com/news/national/florida-killer-seeks-protection-stand-ground-article-1.1446535#ixzz2i3lSEfGf>

Let me also add that within the last month, as criticism of "Stand Your Ground" laws has grown, the Florida State legislature has undertaken a review of its "Stand Your Ground" law. While the NAACP national office and the Florida State Conference of Branches commend the initiative, let me state that the review is much too limited in its scope. I say that it is much too limited because nothing short of a full repeal will prevent regular citizens from deciding that they can get away with killing somebody because they "perceived" that they were threatened will not make much of a difference. I say that it is too late because at this point so many other states have modeled their legislation after the original Florida state law that it is much like closing the proverbial barn door after the horse has escaped. It is also too late for Trayvon Martin and others whose deaths have gone unanswered.

#### **THE DISPARATE IMPACT OF STAND YOUR GROUND LAWS**

The case involving Trayvon Martin and George Zimmerman has motivated national debates not only about Stand Your Ground laws and issues of the use of self defense, but also about race in America. There can be little debate about one fact, however: the American criminal justice system, including but not limited to Stand Your Ground laws, continues to be carried out in a racially biased manner, to the detriment of racial and ethnic minorities Americans. From the days of slavery, through years of lynchings, the black codes, and Jim Crow laws, and even today, too many aspect of our criminal justice code, from traffic stops to capital punishment, has always been deeply affected by race.

While such a statement is certainly quantifiable, as I will get to in a minute, I can also support this contention with an abundance of anecdotal evidence. Part of my job enables me to travel across our country, visiting and speaking with NAACP members and branches in cities and townships of all sizes. I can say unequivocally that at every stop I hear tell of NAACP members or their loved ones being treated unfairly by law enforcement with the perception that the

disparate treatment is racially motivated. It is difficult for our faith in the American criminal justice system not to be challenged when our perception is that we cannot walk down the street, drive down an interstate, go through an airport, or even enter into our own homes without being stopped, or even worse, merely, we strongly believe, because of the color of our skin.

I hasten to add that the majority of law enforcement officials are hard working and courageous men and women, whose concern for the safety of those they are charged with protecting is paramount, even when their own safety is on the line. They are to be commended for their dedication and selflessness. However, if and when laws appear to be implemented in a racially unequal manner, the trust of law enforcement officials by the entire community can be, and will be, lost.

This perception is supported by hard data. The Urban Institute recently completed a study examining the Analysis of FBI Supplementary Homicide Report Data. The study found that homicides with a white perpetrator and an African American victim are ten times more likely to be ruled justified than cases with a black perpetrator and a white victim, and the gap is larger in states with Stand Your Ground laws. After accounting for a variety of factors, such as whether the victim and perpetrator were strangers, the gap is smaller, but still quite significant. Cases with a white perpetrator and an African American victim are 281 percent more likely to be ruled justified than cases with a white perpetrator and white victim<sup>3</sup>.

In states with stand-your-ground laws, the shooting of an African American person by a white person is found justifiable 17 percent of the time, while the shooting of a white person by a black person is deemed justifiable just over 1 percent of the time, according to the study. In states without stand-your-ground laws, white-on-black shootings are found justified just over 9 percent of the time<sup>4</sup>.

An investigative report by the Tampa Bay Times last year also added more much-needed data to the debate surrounding the racially disparate impact of the stand your ground law in Florida. It analyzed 200 stand-your-ground cases in Florida and found that defendants who killed a black person were found not guilty 73 percent of the time, while those who killed a white person were found not guilty 59 percent of the time<sup>5</sup>.

<sup>3</sup> *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, John K. Roman, July, 2013, the Urban Institute. <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>. p. 7

<sup>4</sup> *Ibid*, p. 8

<sup>5</sup> <http://www.tampabay.com/news/state-will-use-newspapers-analysis-for-stand-your-ground-review/1233646>

Such findings “show that it’s just harder for black defendants to assert stand-your-ground defense if the victim is white, and easier for whites to raise a stand-your-ground defense if the victims are black,” says Darren Hutchinson, a law professor and civil rights law expert at the University of Florida in Gainesville. “The bottom line is that it’s really easy for juries to accept that whites had to defend themselves against persons of color.”<sup>6</sup>

#### **THE ORIGINS OF “STAND YOUR GROUND LAWS”**

By all accounts, the various “Stand Your Ground” laws are just one of a package of social policies and proposed legislation which has been promoted throughout the fifty states by the American Legislative Exchange Council, or ALEC. ALEC, which was established in 1973, was first created to serve as a source for businesses – individual companies and corporations – to meet and interact with like-minded legislators and advance their agendas, usually at the state level.

At some point in the mid-2000’s, ALEC established its “Public Safety and Elections Task Force,” a group which strongly advanced “Stand Your Ground” type laws among the states, as well as other laws including laws promoting photo ID requirements for voting and private prisons. The Task Force would draft “model” legislation, which would be promoted at the state level by like-minded state legislators.

In April, 2012, ALEC announced that in light of the public outrage over the activities of the Public Safety and Elections Task Force that it was disbanding the task force, as it dealt with non-economic issues, and reinvesting the resources in the task forces that focus on the economy<sup>7</sup>. This decision to disband the Public Safety and Elections Task Force and to stop its promotion of non-economic policies was further avowed at a meeting almost exactly one year ago between the Executive Director of ALEC, the Chairman of its Board of Directors, and several representatives of the NAACP, including members of our national Board of Directors and me.

Yet I would argue that the disbandment of the Public Safety and Elections Task Force was too little, too late. The damage is still being done, and the work of the now defunct task force continues to wreak havoc across our country. Since April of 2012, when ALEC announced the termination of the task force, 62 proposed Stand Your Ground or voter Photo ID requirement bills, legislation using the ALEC model legislation language, have been introduced in states throughout the country<sup>8</sup>. Furthermore, since that time, five states enacted additional strict

<sup>6</sup> [www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show](http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show)

<sup>7</sup> *ALEC Eliminates Task Force That Did NRA's Bidding*, Media Matters, April 17, 2012, <http://mediamatters.org/blog/2012/04/17/alec-eliminates-task-force-that-did-nras-biddin/184470>

<sup>8</sup> *ALEC at 40: Turning Back the Clock on Progress and Prosperity* Center for Media and Democracy, 2013,

Voter ID restrictions, and two states passed recklessly dangerous Stand Your Ground laws. The disbanding of the Task Force has not resulted in the subsequent rescission of a single piece of ALEC-sponsored legislation.

It should be noted that in addition to the NAACP's strong opposition to Stand Your Ground Laws and strict voter photo ID requirements, the NAACP is also opposed to numerous ALEC-sponsored legislation, including bills to expand states' use of private prisons; diminish or eviscerate workers' rights and benefits (including, but not limited to, workers in the public sector); encourage the use of taxpayer money on private educational institutions at the expense of public facilities; weaken environmental protections; defeat comprehensive health care reform; and promote reforms of state and federal liability laws so that it is harder for individuals to hold reckless, abusive or harmful businesses accountable for their products or actions. Many, if not all, of these initiatives are troubling, provocative, dangerous, ultimately racist in their implementation and in some cases, literally deadly.

#### **SUMMARY**

The NAACP is staunchly opposed to "Stand Your Ground" laws. They are applied in a racially biased manner, and the bottom line is, as we saw in Sanford, FL, that they make it easier for people to murder other human beings and not face any legal consequence. As such eviscerating any deterrent to gun related homicides, and even providing a road map to getting out of jail scot-free.

Numerous studies have shown that Stand Your Ground laws do not deter crime: to the contrary, "justifiable homicides" nearly doubled from 2000 to 2010 in states with Stand Your Ground laws, with a sharp increase after 2005, when Florida and 16 other states passed these immoral laws. While the overall homicide rates in those states stayed relatively flat, the average number of so-called "justifiable" homicide cases per year increased by more than 50% in the decade's latter half<sup>9</sup>. One study also found that homicides overall increased by 500 to 700 per year in Stand Your Ground states<sup>10</sup>.

In addition to the added violence, however, which Stand Your Ground laws have precipitated, these laws are being carried out in such a dangerous, reckless, troubling, and frankly racist manner that they further erode the confidence of entire communities in the American judicial system, in their legislatures, and in the government itself. In order to restore this much-needed confidence, to save lives, and to make our neighborhoods and communities safer, the NAACP

<sup>9</sup> *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine* Cheng Cheng and Mark Hoekstra, Texas A & M University,

<sup>10</sup> *Ibid*

strongly encourages the repeal of all state Stand Your Ground laws and the restoration of sane and sensibly balanced policies of self defense that does not rely on antiquated and barbaric code of the old west, to shoot first and ask questions later.

U.S. Attorney General Eric Holder summed it up quite profoundly at the NAACP National Convention in Orlando, Florida on July 16, 2013, just 30 miles from Sanford, Florida. He stated that Stand Your Ground Laws "try to fix something that was never broken"<sup>11</sup>. They have solved no problems and have made American communities more dangerous. The complete text of Attorney General Holder's comments is also attached to my testimony (see Attachment #2).

Thank you again, Senator Durbin, for your inspired leadership in this area. We stand ready to assist you.

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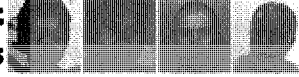
<sup>11</sup> "Attorney General Eric Holder Addresses the NAACP Annual Convention" July 16, 2013  
<http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130716.html>

"FLORIDA 'STAND YOUR GROUND' LAW YIELDS SOME SHOCKING OUTCOMES  
DEPENDING ON HOW LAW IS APPLIED," *Tampa Bay Times*, June 1, 2012, article

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## Tampa Bay Times

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### Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied

By Kris Hundley, Susan Taylor Martin and Connie Humberg, Times Staff Writers

Friday, June 1, 2012 10:25am

Florida's "stand your ground" law has allowed drug dealers to avoid murder charges and gang members to walk free. It has stymied prosecutors and confused judges. • It has also served its intended purpose, exonerating dozens of people who were deemed to be legitimately acting in self-defense. Among them: a woman who was choked and beaten by an irate tenant and a man who was threatened in his driveway by a felon.

Seven years since it was passed, Florida's "stand your ground" law is being invoked with unexpected frequency, in ways no one imagined, to free killers and violent attackers whose self-defense claims seem questionable at best.

Cases with similar facts show surprising — sometimes shocking — differences in outcomes. If you claim "stand your ground" as the reason you shot someone, what happens to you can depend less on the merits of the case than on who you are, whom you kill and where your case is decided.

Today, the shooting death of Trayvon Martin, an unarmed black teen, by a Hispanic neighborhood watch captain has prompted a renewed look at Florida's controversial law.

In the most comprehensive effort of its kind, the *Tampa Bay Times* has identified nearly 200 "stand your ground" cases and their outcomes. The *Times* identified cases through media reports, court records and dozens of interviews with prosecutors and defense attorneys across the state.

Among the findings:

- Those who invoke "stand your ground" to avoid prosecution have been extremely successful. Nearly 70 percent have gone free.
- Defendants claiming "stand your ground" are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white.

<http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-...> 9/11/2013

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- The number of cases is increasing, largely because defense attorneys are using "stand your ground" in ways state legislators never envisioned. The defense has been invoked in dozens of cases with minor or no injuries. It has also been used by a self-described "vampire" in Pinellas County, a Miami man arrested with a single marijuana cigarette, a Fort Myers homeowner who shot a bear and a West Palm Beach jogger who beat a Jack Russell terrier.

- People often go free under "stand your ground" in cases that seem to make a mockery of what lawmakers intended. One man killed two unarmed people and walked out of jail. Another shot a man as he lay on the ground. Others went free after shooting their victims in the back. In nearly a third of the cases the *Times* analyzed, defendants initiated the fight, shot an unarmed person or pursued their victim — and still went free.

- Similar cases can have opposite outcomes. Depending on who decided their cases, some drug dealers claiming self-defense have gone to prison while others have been set free. The same holds true for killers who left a fight, only to arm themselves and return. Shoot someone from your doorway? Fire on a fleeing burglar? Your case can swing on different interpretations of the law by prosecutors, judge or jury.

- A comprehensive analysis of "stand your ground" decisions is all but impossible. When police and prosecutors decide not to press charges, they don't always keep records showing how they reached their decisions. And no one keeps track of how many "stand your ground" motions have been filed or their outcomes.

Claiming "stand your ground," people have used force to meet force outside an ice cream parlor, on a racquetball court and at a school bus stop. Two-thirds of the defendants used guns, though weapons have included an ice pick, shovel and chair leg.

The oldest defendant was an 81-year-old man; the youngest, a 14-year-old Miami youth who shot someone trying to steal his Jet Ski.

Ed Griffith, a spokesman for the Miami-Dade State Attorney's Office, describes "stand your ground" as a "malleable" law being stretched to new limits daily.

"It's arising now in the oddest of places," he said.

That's unlikely to change any time soon, according to prosecutors and defense attorneys, who say the number and types of cases are sure to rise.

"If you're a defense counsel, you'd be crazy not to use it in any case where it could apply," said Zachary Weaver, a West Palm Beach lawyer. "With the more publicity the law gets, the more individuals will get off."

#### **Expanding self-defense**

People have had the right to defend themselves from a threat as far back as English common law. The key in Florida and many other states was that they could not use deadly force if it was reasonably possible to retreat.

That changed in 2005 when Gov. Jeb Bush signed into law Florida Statute 776.013. It says a person "has no duty to retreat and has the right to stand his or her ground" if he or she thinks deadly force is necessary to prevent death, great bodily harm or commission of a forcible felony like robbery.

"Now it's lawful to stand there like Matt Dillon at high noon, pull the gun and shoot back," said Bob Dekle, a University of Florida law professor and former prosecutor in North Florida.

Durell Peaden, the former Republican senator from Crestview who sponsored the bill, said the law was never intended for people who put themselves in harm's way before they started firing. But the criminal justice system has been blind to that intent.



Florida 'stand your ground' law yields some shocking outcomes depending on how law is ... Page 3 of 7

The new law only requires law enforcement and the justice system to ask three questions in self-defense cases: Did the defendant have the right to be there? Was he engaged in a lawful activity? Could he reasonably have been in fear of death or great bodily harm?

Without convincing evidence to the contrary, "stand your ground" protection prevails.

If prosecutors press charges, any defendant claiming self-defense is now entitled to a hearing before a judge. At the immunity hearing, a judge must decide based on the "preponderance of the evidence" whether to grant immunity. That's a far lower burden than "beyond a reasonable doubt," the threshold prosecutors must meet at trial.

"It's a very low standard to prove preponderance," said Weaver, the West Palm Beach lawyer. "If 51 percent of the evidence supports your claim, you get off."

#### **Unequal treatment**

The outcome of a "stand your ground" case can turn on many factors: the location of blood spatters, the credibility of witnesses, the relative size and age of the parties involved. But the *Times* found similar incidents handled in dramatically different ways.

Derrick Hansberry thought John Webster was having an affair with his estranged wife, so he confronted Webster on a basketball court in Dade City in 2005. A fight broke out and Hansberry shot his unarmed rival at least five times, putting him in the hospital for three weeks.

Ultimately, a jury acquitted Hansberry, but not before police and prosecutors weighed in. Neither thought Hansberry could reasonably argue self-defense because he took the gun with him and initiated the confrontation.

A judge agreed, denying him immunity at a hearing.

Compare that case to Deon Mitchell's. In 2006, he showed up at Steven Deon Mitchell's Jacksonville carwash business and started arguing over a woman. When the fight escalated, Harden shot and killed Mitchell, who was unarmed.

Prosecutors filed no charges.

Similar inconsistencies can be found across the state:

- During an argument at a 2009 party in Fort Myers, Omar Bonilla fired his gun into the ground and beat Demarro Battle, then went inside and gave the gun to a friend. If Battle feared for his life, he had time to flee. Instead, he got a gun from his car and returned to shoot Bonilla three times, including once in the back. Battle was not charged in the slaying.

At another party in the same town five months later, Reginald Etienne and Joshua Sands were arguing. Etienne left the party and returned with a knife. During a fistfight between the two men, Etienne fatally stabbed Sands. He was sent to prison for life.

- In Winter Springs, Owen Eugene Whitlock came home on Christmas Eve 2009 to find his daughter's boyfriend, Jose Ramirez, angrily stalking up his driveway, flexing his muscles and swinging his fists. Whitlock stood his ground and fired a fatal shot. He was not charged.

In Clearwater, Terry Tyrone Davis shot and killed his cousin as he stalked up the walkway of Davis' home in 2010 with a group of friends. "There's no doubt he was going over there to kick his a--," Circuit Judge Philip J. Federico said, "but that does not allow you to kill a guy." Davis is now serving 25 years in prison.

- In West Palm Beach, Christopher Cote started pounding on the door of neighbor Jose Tapanes at 4 a.m. after

an argument over Cote's dog. Tapanes stepped outside and fired his shotgun twice, killing Cote. A jury acquitted him, but prosecutors and a judge had discounted Tapanes' self-defense claim, saying if he was truly afraid for his life, he should not have stepped outside.

Yet Rhonda Eubanks was not arrested or charged when she opened her front door one evening in 2006 and fatally shot a man who had been causing a ruckus in her Escambia County neighborhood. He had tried to get into her house, then left and tried to take her neighbors' cars. When he returned, Eubanks stood near her doorway and fired as he approached.

Discrepancies among cases cannot all be explained by small differences in the circumstances. Some are clearly caused by different interpretations of the law. When Gerald Terrell Jones shot his marijuana dealer in the face in Brandon this year, he was charged with attempted murder and aggravated assault. A jury later acquitted him. But a judge had rejected Jones' "stand your ground" motion, in part, because he was committing a crime at the time.

Elsewhere in the state, drug dealers have successfully invoked "stand your ground" even though they were in the middle of a deal when the shooting started. In Daytona Beach, for example, police Chief Mike Chitwood used the "stand your ground" law as the rationale for not filing charges in two drug deals that ended in deaths. He said he was prevented from going forward because the accused shooters had permits to carry concealed weapons and they claimed they were defending themselves at the time. "We're seeing a good law that's being abused," Chitwood told a local paper. **Various interpretations**

Disparities have been driven in part by vague wording in the 2005 law that has left police, prosecutors and judges struggling to interpret it. It took five years for the Florida Supreme Court to decide that judges should base immunity decisions on the preponderance of evidence. Still unresolved is whether a defendant can get immunity if he illegally has a gun. And courts are divided on what the law is when a victim is retreating. David Heckman of Tampa lost his bid for "stand your ground" protection because his victim was walking away when Heckman shot him.

"We conclude that immunity does not apply because the victim was retreating," the court said. But Jimmy Hair, who was sitting in a car when he was attacked in Tallahassee, was treated differently. He shot his victim as the man was being pulled from the vehicle. An appeals court gave immunity to Hair, saying: "The statute makes no exception from immunity when the victim is in retreat at the time the defensive force is employed."

While many have argued the law does not allow someone to pick a fight and claim immunity, it has been used to do just that. It is broad enough that one judge complained that in a Wild West-type shootout, where everybody is armed, everyone might go free. "Each individual on each side of the exchange of gunfire can claim self-defense," Leon County Circuit Judge Terry P. Lewis wrote in 2010, saying it "could conceivably result in all persons who exchanged gunfire on a public street being immune from prosecution." Lewis was considering immunity motions stemming from a Tallahassee gang shooting that resulted in the death of one of the participants, a 15-year-old boy.

The judge said he had no choice but to grant immunity to two men who fired the AK-47 responsible for the death even though they fired 25 to 30 times outside an apartment complex. The reason: It could not be proved they fired first. **Questionable cases**

Whatever lawmakers' expectations, "stand your ground" arguments have resulted in freedom or reduced sentences for some unlikely defendants. • An 18-year-old felon, convicted of cocaine and weapons charges, shot and wounded a neighbor in the stomach, then fled the scene and was involved in another nonfatal shootout two days later, according to police. He was granted immunity in the first shooting. • Two men fell into the water while fighting on a dock. When one started climbing out of the water, the other shot him in the back of the head, killing him. He was acquitted after arguing "stand your ground."

• A Seventh-day Adventist was acting erratically, doing cartwheels through an apartment complex parking lot, pounding on cars and apartment windows and setting off alarms. A tenant who felt threatened by the man's behavior shot and killed him. He was not charged.

• A Citrus County man in a longstanding dispute with a neighbor shot and killed the man one night in 2009. He was not charged even though a witness and the location of two bullet wounds showed the victim was turning to leave when he was shot.

Even chasing and killing someone over a drug buy can be considered standing your ground. Anthony Gonzalez Jr. was part of a 2010 drug deal that went sour when someone threatened Gonzalez with a gun. Gonzalez chased the man down and killed him during a high-speed gunbattle through Miami streets.

Before the "stand your ground" law, Miami-Dade prosecutors would have had a strong murder case because Gonzalez could have retreated instead of chasing the other vehicle. But Gonzalez's lawyer argued he had a right to be in his car, was licensed to carry a gun and thought his life was in danger. Soon after the filing of a "stand your ground" motion, prosecutors agreed to a deal in which Gonzalez pleaded guilty to the lesser charge of manslaughter and got three years in prison. "The limitations imposed on us by the 'stand your ground' laws made it impossible for any prosecutor to pursue murder charges," Griffith of the Miami-Dade State Attorney's Office said at the time. "This is certainly a very difficult thing to tell a grieving family member." **Increase in cases**

If there's one thing on which critics and supporters agree, it is that the "stand your ground" law is being applied in a growing number of cases, including misdemeanors. That trend is reflected in the *Times*' database, with a five-fold increase in nonfatal cases from 2008 to 2011.

Meanwhile, the number of fatalities in which "stand your ground" played a role dropped from a peak of 24 cases in 2009 to half that number in 2011. The nearly 200 cases found by the *Times* include most of the high-profile homicides in which the law is invoked.

Uncovering minor cases in which defendants argue "stand your ground" is more difficult. When asked by the *Times*, public defenders in Pinellas, Pasco and Hillsborough counties came up with a total of 60 "stand your ground" motions filed by their offices in recent years.

In Miami-Dade County, officials tried to count all the "stand your ground" motions filed in the past year. Their best estimate: 50. If those counties are any indication, several hundred defendants are now invoking the law annually. Its expanded use comes at a cost to the court system. In April, a hearing on whether William Siskos should get immunity for killing his girlfriend's husband included the all-day use of a Brooksville courtroom, a judge, a public defender, two prosecutors, clerks and bailiffs and an expert witness who was paid \$750 an hour. The judge denied the motion and the case is pending. "The court system is overburdened enough without having a bunch of expensive, unnecessary, time-consuming hearings on stand your ground," said Dekle, the University of Florida professor. **Argument for success**

Donald Day is a Naples defense lawyer who has handled three "stand your ground" cases and believes the law is working "remarkably well." Day said the immunity hearings are a critical backstop in self-defense cases that should never go to a jury. Of the cases in the *Times*' database that have been resolved, 23 percent were dismissed by a judge after an immunity hearing. That means 38 defendants facing the prospect of a jury trial were set free by a judge who ruled the evidence leaned in their favor.

"Where the defendant is clearly in the right and gets arrested, should you have to take your chance with what six people believe or don't believe?" Day said. "Judges are denying these motions where they should be denied and granting them in the limited number of cases statewide where they should be granted." A prime example, he said, is the case of his client, Jorge Saavedra, a 14-year-old charged with aggravated manslaughter last year in the death of Dylan Nuno.

Saavedra was in special education classes at Palmetto Ridge High School in Collier County and was often the target of taunts. Nuno, 16, went to the same school. On Jan. 24, 2011, the two boys were riding the bus home. Saavedra was warned repeatedly that Nuno intended to fight with him when he got off at his regular stop. Saavedra replied each time that he did not want to fight, but he also pulled out a pocketknife to show friends. Saavedra got off the bus early with a friend to try to avoid a confrontation. But Nuno and his friends followed, and Nuno punched the younger boy in the back of the head. For a while, Saavedra kept walking as he was being

punched. Then he turned, reached in his pocket for the knife and stabbed Nuno 12 times. Prosecutors pursued charges despite evidence that Saavedra tried to get away and felt cornered by an older boy and a crowd of teens shouting for a fight. They argued that because he brought a knife to a fistfight, he should be tried for murder. Without "stand your ground," Saavedra would likely have gone to trial. But the law required a hearing before a judge and that judge granted him immunity. Nuno's mother, Kim Maxwell, said her son made a bad decision to throw the first punch, but she's incredulous that it led to his death and even more stunned that his killer went free. Said Day: "You don't have to wait until you're dead before you use deadly force." **'Emboldening'**

As "stand your ground" claims have increased, so too has the number of Floridians with guns. Concealed weapons permits now stand at 1.1 million, three times as many as in 2005 when the law was passed. "I think the (stand your ground) law has an emboldening effect. All of a sudden, you're a tough guy and can be aggressive," said George Kirkham, a professor emeritus at Florida State University who has worked as a police officer. Criminologists say that when people with guns get the message they have a right to stand and fight, rather than retreat, the threshold for using that gun goes down. All too often, Bruce Bartlett, chief assistant state attorney for Pinellas-Pasco counties, sees the result. "I see cases where I'll think, 'This person didn't really need to kill that person but the law, as it is written, justifies their action,'" Bartlett said about incidents that his office decides not to prosecute due to "stand your ground." "It may be legally within the boundaries. But at the end of the day, was it really necessary?" *Times* researchers Carolyn Edds, Caryn Baird and Natalie Watson contributed to this report. Kris Hundley can be reached at (727) 892-2996 or [khundley@tampabay.com](mailto:khundley@tampabay.com). Susan Taylor Martin can be reached at (727) 893-8642 or [susan@tampabay.com](mailto:susan@tampabay.com).

#### About the story

##### Source of data

The *Tampa Bay Times* used published newspaper reports, police reports, court records and documents obtained from selected prosecutors and defense attorneys to compile a partial list of self-defense cases in Florida since 2005. Although this list likely contains most fatalities in which "stand your ground" was invoked, it does not include scores of less serious cases from around the state.

##### Cases included

Not all self-defense cases were considered. The *Times* included 118 cases in which a "stand your ground" immunity hearing before a judge was requested. In the majority of the remaining cases, a law enforcement official, prosecutor or defense attorney invoked the law. The *Times* also included 29 cases where circumstances appeared to reflect the Legislature's intent when it passed the law. For example, if a defendant claiming self-defense could have retreated from a confrontation but chose not to, the case was classified as "stand your ground."

Home invasion robberies and other cases that clearly would have been self-defense under previous law were not included unless a "stand your ground" immunity motion was filed. If a case occurred on the defendant's property but outside the home, it was included if the defendant could have retreated inside the home.

##### Race and ethnicity

The race and ethnicity of victims and defendants were compiled from various sources, including police reports and driver's license records. Police and sheriff's offices often consider Hispanics as an ethnic group and record their race as white or black. As a result, some Hispanics may be counted in their race category in the *Times'* calculations.

##### Evolving information

<http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-...> 9/11/2013

Florida 'stand your ground' law yields some shocking outcomes depending on how law is ... Page 7 of 7

Some cases may have changed significantly since the original media reports as a result of further investigation or court events. As a result, some summaries may be incomplete or contain outdated information.

Some cases are still pending and no determination of guilt has been made. If you have information about any factual errors in a summary, or about further developments in a case, please contact Connie Humburg at [chumburg@tampabay.com](mailto:chumburg@tampabay.com).

#### Florida's 'stand your ground' law

In 2005, Florida legislators made it easier to claim self-defense by rewriting the law so that a person "has no duty to retreat and has the right to stand his or her ground." Here's how it works:

- Anyone who is not engaged in illegal activity and is in a place where he or she has the right to be can claim self-defense in using violence against another. Police cannot arrest someone with a reasonable claim. No arrest does not mean a person will never be charged, but it can affect how thoroughly police investigate.
- In most homicides, prosecutors review case details and decide whether charges should be filed. In self-defense cases, prosecutors will not charge if they feel they cannot refute the person's assertion of self-defense. Once a charge is filed, the case moves into the court system.
- The law requires a judge to hold a "stand your ground" immunity hearing if the defendant asks for one. At that hearing, prosecutors must convince a judge there is enough evidence to go forward to trial. If they fail, a judge can grant immunity from prosecution. Either side can appeal a judge's decision.
- If immunity is denied, defendants can seek a plea agreement or take their chances at trial, where they can still argue they had the right to stand their ground. Judges give jurors detailed instructions, saying they cannot convict just because a defendant did not retreat or because he or she killed an unarmed victim.

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NAACP ANNUAL CONVENTION, ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL, JULY  
16, 2013, SPEECH

ATTACHMENT #2:

Attorney General Eric Holder Addresses the NAACP Annual Convention" July 16, 2013

**Attorney General Eric Holder Addresses the NAACP Annual Convention**

~ Tuesday, July 16, 2013

Thank you, Detrick [Johnson], for those kind words – and thank you all for such a warm welcome. It's a pleasure to be in Orlando today. And it's a privilege to join President [Ben] Jealous, Chairman [Roslyn] Brock, your National Board of Directors – and my good friends Secretary [Shaun] Donovan and Secretary [Kathleen] Sebelius – in celebrating the NAACP's 104th Annual Convention, and recommitting ourselves to your important work.

I'm proud to be in such good company this afternoon – among so many friends, courageous civil rights leaders, and passionate men and women who have dedicated themselves to bringing our nation together, addressing common challenges, and focusing attention on the problems and inequities that too many of our citizens continue to face.

Even as this convention proceeds, we are all mindful of the tragic and unnecessary shooting death of Trayvon Martin last year – in Sanford, just a short distance from here – and the state trial that reached its conclusion on Saturday evening. Today, I'd like to join President Obama in urging all Americans to recognize that – as he said – we are a nation of laws, and the jury has spoken. I know the NAACP and its members are deeply, and rightly, concerned about this case – as passionate civil rights leaders, as engaged citizens, and – most of all – as parents. This afternoon, I want to assure you of two things: I am concerned about this case and as we confirmed last spring, the Justice Department has an open investigation into it. While that inquiry is ongoing, I can promise that the Department of Justice will consider all available information before determining what action to take.

Independent of the legal determination that will be made, I believe this tragedy provides yet another opportunity for our nation to speak honestly – and openly – about the complicated and emotionally-charged issues that this case has raised.

Years ago, some of these same issues drove my father to sit down with me to have a conversation – which is no doubt familiar to many of you – about how as a young black man I should interact with the police, what to say, and how to conduct myself if I was ever stopped or confronted in a way I thought was unwarranted. I'm sure my father felt certain – at the time – that my parents' generation would be the last that had to worry about such things for their children.

Since those days, our country has indeed changed for the better. The fact that I stand before you as the 82nd Attorney General of the United States, serving in the Administration of our first African American President, proves that. Yet, for all the progress we've seen, recent events demonstrate that we still have much more work to do – and much further to go. The news of Trayvon Martin's death last year, and the discussions that have taken place since then, reminded me of my father's words so many years ago. And

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they brought me back to a number of experiences I had as a young man – when I was pulled over twice and my car searched on the New Jersey Turnpike when I'm sure I wasn't speeding, or when I was stopped by a police officer while simply running to catch a movie, at night in Georgetown, in Washington, D.C. I was at the time of that last incident a federal prosecutor.

Trayvon's death last spring caused me to sit down to have a conversation with my own 15 year old son, like my dad did with me. This was a father-son tradition I hoped would not need to be handed down. But as a father who loves his son and who is more knowing in the ways of the world, I had to do this to protect my boy. I am his father and it is my responsibility, not to burden him with the baggage of eras long gone, but to make him aware of the world he must still confront. This is a sad reality in a nation that is changing for the better in so many ways.

As important as it was, I am determined to do everything in my power to ensure that the kind of talk I had with my son isn't the only conversation that we engage in as a result of these tragic events.

In the days leading up to this weekend's verdict, some predicted – and prepared for – riots and waves of civil unrest across the country. Some feared that the anger of those who disagreed with the jury might overshadow and obscure the issues at the heart of this case. But the people of Sanford, and, for the most part, thousands of others across America, rejected this destructive path. They proved wrong those who doubted their commitment to the rule of law. And across America, diverse groups of citizens, from all races, backgrounds, and walks of life, are instead overwhelmingly making their voices heard – as American citizens have the right to do – through peaceful protests, rallies, and vigils designed to inspire responsible debate – not incite violence and division; and those who conduct themselves in a contrary manner do not honor the memory of Trayvon Martin.

I hope that we will continue to approach this necessarily difficult dialogue with the same dignity that those who have lost the most – Trayvon's parents – have demonstrated throughout the last year – and especially over the past few days. They suffered a pain that no parent should have to endure – and one that I, as a father, cannot begin to conceive. As we embrace their example – and hold them in our prayers – we must not forego this opportunity to better understand one another. And we must not fail to seize this chance to improve this nation we cherish.

Today – starting here and now – it's time to commit ourselves to a respectful, responsible dialogue about issues of justice and equality – so we can meet division and confusion with understanding, with compassion, and ultimately with truth.

It's time to strengthen our collective resolve to combat gun violence but also time to combat violence involving or directed toward our children – so we can prevent future tragedies. And we must confront the

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underlying attitudes, mistaken beliefs, and unfortunate stereotypes that serve too often as the basis for police action and private judgments.

Separate and apart from the case that has drawn the nation's attention, it's time to question laws that senselessly expand the concept of self-defense and sow dangerous conflict in our neighborhoods. These laws try to fix something that was never broken. There has always been a legal defense for using deadly force if – and the "if" is important – no safe retreat is available.

But we must examine laws that take this further by eliminating the common sense and age-old requirement that people who feel threatened have a duty to retreat, outside their home, if they can do so safely. By allowing and perhaps encouraging violent situations to escalate in public, such laws undermine public safety. The list of resulting tragedies is long and – unfortunately – has victimized too many who are innocent. It is our collective obligation – we must stand our ground – to ensure that our laws reduce violence, and take a hard look at laws that contribute to more violence than they prevent.

We must also seek a dialogue on attitudes about violence and disparities that are too commonly swept under the rug – by honoring the finest traditions established by generations of NAACP leaders and other nonviolent advocates throughout history; and by paying tribute to the young man who lost his life here last year – and so many others whose futures have been cut short in other incidents of gun violence that pass, too often unnoticed, in our streets: by engaging with one another in a way that is at once peaceful, inclusive, respectful – and strong.

As we move forward together, I want to assure you that the Department will continue to act in a manner that is consistent with the facts and the law. We are committed to doing everything possible to ensure that – in every case, in every circumstance, and in every community – justice must be done.

For more than a century – since this organization was founded, in 1909 – the NAACP has led efforts to do just that, standing on the front lines of our fight to ensure security, opportunity, and equal treatment under law. Especially in times of need and moments of danger, you have dared to seek opportunities for progress and growth – challenging this nation to aim higher, to become better, and to move ever closer to its founding ideals.

Under the banner of the NAACP, courageous men and women like W.E.B. DuBois, Walter White, Charles Hamilton Houston, Ida B. Wells, Rosa Parks, Martin Luther King, Jr. – and countless others whose names may be less familiar, but whose contributions are no less important – have raised their voices, and too often given their lives, to advance our common pursuit of a more perfect Union. Their stories prove that today's civil rights leaders can best honor the progress of the last century by planning for the challenges of the next. Their examples remind us that – as recent events illustrate – our work is far from over. And it's time to acknowledge, once again, that we have much more to do.



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After all, we come together today in another moment of need, during a year defined by historic milestones – including, just last month, the 50th anniversary of the infamous “Stand in the Schoolhouse Door” – when two brave young students enlisted the advice of NAACP lawyers, the support of the Justice Department, and the protection of the National Guard to step past Governor George Wallace and integrate the University of Alabama.

One of those students, Vivian Malone, would much later become my sister-in-law. Although she passed away several years ago – much too soon – her courage made a strong impression on me when I was a young man. Her story, and others like it, drove me to dream of a career in public service – and led me to spend my first summer in law school working for the NAACP’s Legal Defense Fund. And her memory inspires me to think often of the historic speech that President John F. Kennedy delivered on that fateful night – 50 years ago last month – when he addressed the American people; expressed his support for Vivian and her classmate, James Hood; and described the cause of civil rights as a “moral issue” that is “as old as the scriptures and . . . as clear as the Constitution.”

In that extraordinary moment, President Kennedy urged his fellow citizens to refuse to accept that anyone could be denied opportunity, denied education, or denied the future of their choosing just because of the color of their skin. And he called on Congress to pass sweeping civil rights legislation – outlining a series of proposals that would later be included in the Civil Rights Act of 1964 and the landmark Voting Rights Act of 1965.

Once signed into law by his successor, President Lyndon Johnson, these proposals affirmed – and codified into law – the greatest of American ideals: that all are created equal. They established protections for the rights to which every citizen, and every eligible voter, is entitled. And they came to represent nothing less than the foundation of modern civil rights law.

Unfortunately, last month, an important piece of this foundation was chipped away – when the Supreme Court invalidated a key part of the Voting Rights Act.

Over the years – and in the past 18 months – this provision, called pre-clearance, allowed the Department to take swift action against numerous jurisdictions that adopted rules or procedures with either a discriminatory purpose or effect. It served as a potent tool for addressing inequities in our elections systems. And it proved the effectiveness of a legal mechanism that puts on hold any new voting changes until they have been subjected to a fair, and thorough, review.

Let me be clear: this was a deeply disappointing and flawed decision. It dealt a serious setback to the cause of voting rights. And, like all of you, I strongly disagree with the Court’s action.

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After all, as we've seen over the last 18 months, numerous successful decisions in the Department's Voting Rights Act cases have proven that – far from being an antiquated relic of a bygone era – such a process frequently resulted in approvals for fair and impartial voting changes, while allowing the Department to work with jurisdictions to address problems wherever they occur.

For instance, just last year, a federal court noted the "vital function" that preclearance played in protecting black voters who would have been disproportionately impacted by a photo ID law in South Carolina. Because of the Department's engagement with the state during the administrative review and later litigation, South Carolina officials changed how their new voting statute will be implemented in future elections – to eliminate what would otherwise have been a dramatic discriminatory effect. Another court cited the Voting Rights Act in blocking a Texas congressional redistricting map that would have discriminated against Latino voters – noting that the parties "provided more evidence of discriminatory intent than we have space, or need, to address here."

These cases, and many others, illustrate that these problems are real. They are significant. They corrode the foundations of our democracy. And they are of today – not yesterday. In fact, despite last month's ruling, every member of the Supreme Court has agreed that – as the Chief Justice wrote, "voting discrimination still exists: no one doubts that." Therefore, the struggle for voting rights cannot be relegated to the pages of history. And this is why protecting the fundamental right to vote – for all Americans – will continue to be a top priority for the Department of Justice so long as I have the privilege of serving as Attorney General.

It's also why – although I remain disappointed with this outcome – I believe we must regard it not as a defeat, but as a rare and historic opportunity: for Congress to consider new legislation restoring and even strengthening modern voting protections – in a manner that's consistent with the record established by one of the most effective civil rights laws in American history.

After all, in the nearly half-century since its passage, the Voting Rights Act enjoyed broad, bipartisan support on Capitol Hill as well as in the executive branch. Its most recent reauthorization passed Congress with near-unanimous support in 2006, and was signed into law by President Bush – just as prior reauthorizations had been signed by Presidents Reagan, Ford, and Nixon.

This is because providing fair and equal access to the ballot box has never been a partisan issue. It's an American issue. It's about the core values that define us as a nation – and who we say we are as a people.

Whatever solutions our Congressional leaders consider, I urge them to bear in mind – as they move forward – that the right to vote is both a guarantee and a sacred duty, conferred by citizenship and protected by the United States Constitution. Quite simply, Congress must take steps to ensure that every eligible American has equal access to the polls.

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In the meantime, the Justice Department will continue to monitor jurisdictions around the country for any changes that may hamper voting rights. We will not hesitate to take aggressive action – using every tool that remains available to us – against any jurisdiction that attempts to take advantage of the Supreme Court's ruling by hindering eligible citizens' free and fair exercise of the franchise.

We also will not wait for Congressional action to refine – and re-focus – our current enforcement efforts. In fact, I am announcing today that I have directed the Department's Civil Rights Division to shift resources to the enforcement of Voting Rights Act provisions that were not affected by the Supreme Court's ruling – including Section 2, which prohibits voting discrimination based on race, color, or language – in addition to other federal voting rights laws.

It is clear that our work is anything but complete. Our cause is not yet fulfilled. And, for all the progress we've made over the last 104 years – our nation's journey along the road to equality and opportunity is far from over.

This journey goes on every day in the efforts of those who seek to extend the legacy that our predecessors have established – by combating violence and realizing America's founding, and enduring, promise of equal justice under law. It goes on in the steadfast commitment of my colleagues throughout the Justice Department – and the entire Obama Administration – to prevent all types of civil rights violations. Most of all, it goes on in the passionate advocacy of concerned, dedicated, and ultimately hopeful men and women in – and far beyond – this room: the members and leaders of America's oldest and largest civil rights organization.

Make no mistake – the NAACP's work is not just historically relevant. It is, and will always be, a vital and contemporary part of what makes this country truly exceptional.

So let us pledge that we will honor heroes like Dr. King, Medgar Evers, Vivian Malone – and so many others who have struggled, sacrificed, and died for the freedoms we now enjoy – by zealously guarding the progress they achieved, and matching their contributions with our own.

Above all, let us act – with optimism, and without delay – to seize the breathtaking opportunities now before us. To see that justice is done, and strengthen our nation's long tradition of increasing opportunity and inclusion. And to continue the work that constitutes our shared purpose, and must always remain our common cause: the enduring pursuit of a more equitable, more just, and more perfect Union.

Thank you.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., WASHINGTON, DC,  
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Testimony of Sherrilyn Ifill

President and Director-Counsel

NAACP Legal Defense & Educational Fund, Inc.

Before the United States Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

"Stand Your Ground" Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force"

Dirksen Senate Office Building  
Room 226

October 29, 2013

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

On behalf of the NAACP Legal Defense & Educational Fund, Inc. (LDF), I am pleased to offer this written testimony in connection with the hearing on so-called “Stand Your Ground” laws. We urge you to address the significant civil rights and public safety concerns presented by Stand Your Ground laws. Although these laws may have been enacted to provide law-abiding citizens with a necessary tool for self-protection, research and experience demonstrate that, in practice, Stand Your Ground laws have the paradoxical effect of increasing the risk of violence. Specifically, Stand Your Ground laws have been proven to be uniquely vulnerable to racial bias and, as a result, jeopardize the safety and well-being of communities of color; foster, instead of ameliorate, the exercise of lethal force in the states in which they exist; and undermine the efforts of law enforcement to prevent and deter violence. Because the deleterious effects of these laws implicate core principles of equal justice and threaten the legitimacy of the criminal justice system, LDF believes that Congress should encourage states to abandon these misguided laws and instead adopt reforms that appropriately regulate the use of force and improve public safety for all communities.

LDF is the nation’s first civil rights law firm. It was founded in 1940 by Charles Hamilton Houston and Thurgood Marshall to redress injustices caused by racial discrimination and to assist African Americans in securing their constitutional and statutory rights. For over seven decades, LDF has worked to eradicate the influence of race on the administration of justice. Thus, LDF has consistently advocated for pragmatic reform of laws, policies, and practices that impose a

disproportionately negative impact on communities of color and frustrate the proper functioning of the criminal justice system.

At their inception, Stand Your Ground laws were heralded as moderate reforms of self-defense laws that would offer necessary protection to law-abiding individuals who defended themselves against violent attacks.<sup>1</sup> Functionally, these laws expand the traditional notion of self-defense by eliminating the duty to retreat in the face of a threat and, instead, permit the use of deadly force where there is a reasonable belief that such force is necessary to prevent bodily harm or the commission of a forcible felony.<sup>2</sup> Pursuant to Stand Your Ground, the exercise of deadly force in defense of persons or property is presumed to be reasonable, and in many states those who are found to have used such reasonable lethal force are immune from criminal prosecution and civil actions.<sup>3</sup> Thus, unlike traditional self-defense laws that mandate a retreat from violence, Stand Your Ground laws *encourage* the use of deadly force when there is a reasonable belief that such force is necessary, even if retreating is a viable option.

Unfortunately, stereotypes and biases linking race, criminality, and dangerousness influence the life-and-death judgments about whether deadly force is needed to meet a perceived threat in ways that repeatedly lead to the unjustified use of lethal force.<sup>4</sup> For example, psychological research shows that false

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<sup>1</sup> See, e.g., *Florida Members! Restore Your Right to Self-Protection*, Nat'l Rifle Assoc. Inst. for Legislative Action (Feb. 4, 2005), <http://www.nraila.org/legislation/state-legislation/2005/2/florida-members!-restore-your-right-to.aspx?s=Castle&st=&ps=>

<sup>2</sup> See, e.g., Fla. Stat. Ann. § 776.013 (West 2013).

<sup>3</sup> See, e.g., Fla. Stat. Ann. § 776.032 (West 2013).

<sup>4</sup> L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 Iowa L. Rev. 293, 307-310 (2012) (explaining that individuals rely on stereotypes

stereotypes linking African Americans with criminality are pervasive and often unconscious.<sup>5</sup> Although the largest percentage of criminals and convicts in the United States are white, the common perception remains that African Americans perpetrate the majority of crime.<sup>6</sup> African Americans are more likely than any other racial or ethnic group to be characterized as violent or aggressive by the general public and the media.<sup>7</sup> Even those who do not consciously harbor negative associations between race and criminality are regularly infected by unconscious views that equate race with violence:<sup>8</sup> indeed, the vast majority of Americans perceive the same behavior as more threatening when performed by an African American than by a white person.<sup>9</sup>

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when attempting to predict the likelihood that another person poses a threat because of a cognitive preference for intuition over rational judgments); Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. Personality & Soc. Psychol. 5, 15 (1989), [https://mywebspace.wisc.edu/wtcox/web/trishpubs\\_files/Devine%20\(1989\).pdf?uniq=-c4okl9](https://mywebspace.wisc.edu/wtcox/web/trishpubs_files/Devine%20(1989).pdf?uniq=-c4okl9).

<sup>5</sup> Richardson & Goff, *supra* note 4, at 310-11.

<sup>6</sup> Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, J. of Contemp. Crim. Just. vol. 23 no. 3 (Aug. 2007), at 276-88, <http://www.sagepub.com/gabbidonstudy/articles/Welch.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Devine, *supra* note 4, at 7. See generally Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 Group Dynamics 101 (2002).

<sup>9</sup> See Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. Personality & Soc. Psychol. 590, 595 (1976) (finding that 75 percent of individuals observing an African American shoving a white person thought the shove constituted "violent" behavior, while only 17 percent of individuals observing a white person shoving an African American characterized the shove as "violent" behavior and 42 percent characterized the interaction as "playing around"). See also H. Andrew Sagar & Janet Ward Schofield, *Racial and Behavioral Cues in Black and White Children's Perceptions of Ambiguously Aggressive Acts*, 39 J. Personality & Soc. Psychol. 590, 596 (1980) (finding that both African-American and white children tended to rate relatively innocuous behavior by African Americans as more threatening than similar behavior by whites).

These false, preconceived notions can – and do – lead individuals to mislabel innocent behavior as criminal or violent and, thus, respond with deadly force. Young African-American men, in particular, are vulnerable to violence committed by individuals who – relying on false stereotypes that link race with criminality – mistakenly perceive them to be dangerous.<sup>10</sup> Tragic examples of this phenomenon abound.<sup>11</sup> The recent shooting death of Trayvon Martin at the hands of George Zimmerman dramatically highlights the relationship between implicit racial biases and the improper use of lethal force. Mr. Zimmerman viewed Trayvon – an African-American youth who was walking home from the store in the rain, wearing a hooded sweatshirt and carrying candy and iced tea – as a dangerous criminal. In the absence of any objective evidence to confirm that view, Mr. Zimmerman relied solely on his intuitive assessment that Trayvon “looked like he was up to no good.”<sup>12</sup> After a brief altercation, Mr. Zimmerman shot Trayvon in the chest, claiming afterwards that he fired his gun in self-defense.<sup>13</sup>

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<sup>10</sup> Sophie Trawalter et al., *Attending to Threat: Race-Based Patterns of Selective Attention*, 44 J. Experimental Soc. Psychol. 1322 (2008) (“There is overwhelming evidence that young Black men are stereotyped as violent, criminal, and dangerous . . . both implicitly as well as explicitly.” (citations omitted)).

<sup>11</sup> See, e.g., Lizette Alvarez, *Murder Charges Upgraded in Florida Killing of Youth*, N.Y. Times, Dec. 14, 2012, at A11 (17 year old African-American youth shot and killed after argument about loud music); Patrick Michels, *Joe Horn and Five Years with the Texas Castle Doctrine*, Texas Observer, May 8, 2012, <http://www.texasobserver.org/joe-horn-and-castle-doctrine-shootings-in-texas/> (15 year old African American child shot by a Texas man who assumed teenager was a burglar); Stephen P. Garvey, *Self-Defense and the Mistaken Racist*, 11 New Crim. L. Rev. 119 (2008) (describing the shooting of four unarmed African-American men in New York City by Bernie Goetz).

<sup>12</sup> Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not-Yet-Post-Racial Society*, 91 N.C. L. Rev. 1555 (2013).

<sup>13</sup> *Id.* at 1558.



Given the pervasiveness of implicit racial biases, Stand Your Ground laws have produced stark racial disparities in the full range of homicide cases. For example, homicides of African Americans committed by whites are more likely to be declared justified in Stand Your Ground states than in jurisdictions without Stand Your Ground laws. Thus, in Stand Your Ground states, over 1 in 6 homicides of African Americans committed by whites – 16.85 percent – are deemed justified.<sup>14</sup> In non-Stand Your Ground states, however, only 9.5 percent of such homicides are classified as justifiable.<sup>15</sup> While there is no evidence to suggest that whites facing deadly force by an African American are more likely to act reasonably than African Americans facing deadly force by a white person, the immunities provided by Stand Your Ground laws appear to disproportionately benefit whites who kill African Americans.<sup>16</sup> And these are exactly the kinds of racial disparities that contribute to

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<sup>14</sup> These estimates were calculated using data from the Federal Bureau of Investigations Supplementary Homicide Report, as compiled by John Roman, a senior fellow in the Justice Policy Center at the Urban Institute. Mr. Roman recently published a study on race and justifiable homicide that explores the racial disparities produced under Stand Your Ground laws. John Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute, 7 (July 2013), <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

<sup>15</sup> *Id.* Notably, there is essentially no difference in the percentage of homicides of whites committed by African Americans that are classified as justifiable in Stand Your Ground states (1.4 percent) and non-Stand Your Ground states (1.13 percent).

<sup>16</sup> *Id.* at 5-6. Mr. Roman controlled for a range of factors, including whether a handgun was used, whether there was a single victim or a single shooter, the region of the country where the homicide occurred, the year, the age of the victim, the age of the offender, and whether the offender was older than the victim. No variable other than race explained the disparities found in the outcome of homicide investigations in Stand Your Ground jurisdictions.

the pervasive sentiment in communities of color that African Americans and other communities of color do not receive fair treatment in the criminal justice system.<sup>17</sup>

Furthermore, although Stand Your Ground laws were promoted as deterrents to violent crime, they appear to actually foster violence and hamper law enforcement efforts to secure public safety. By nearly eliminating the cost of using lethal force, Stand Your Ground laws incentivize the regular use force.<sup>18</sup> As a result, controlling for other factors, states with Stand Your Ground laws experience significantly higher rates of homicide than states without such laws.<sup>19</sup> Furthermore, since they were first introduced in 2005, Stand Your Ground laws have induced over 3,000 additional homicides across the United States.<sup>20</sup> While some of these homicides may have been justified, economists believe that at least half were not.<sup>21</sup> Thus, an undeniably negative consequence of Stand Your Ground laws appears to be an increase in homicides without any deterrent effect on other forcible felonies, such as burglary, robbery, and aggravated assault.<sup>22</sup>

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<sup>17</sup> In a July 2013 poll by the Washington Post and ABC News, a majority of adults of all races opined that racial minorities received unequal treatment in the criminal justice system. Sixty-eight percent of non-white adults expressed that opinion, including 86 percent of African Americans. July 2013 Washington Post-ABC News Poll, *Q: On another subject, do you think blacks and other minorities receive equal treatment as whites in the criminal justice system or not?*, Wash. Post, (July 26, 2013), [http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/07/22/National-Politics/Polling/question\\_11458.xml?uuiid=xlqfYvLnEeKEZFflevhika#](http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/07/22/National-Politics/Polling/question_11458.xml?uuiid=xlqfYvLnEeKEZFflevhika#).

<sup>18</sup> Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, forthcoming in J. Hum. Resources (2012), at 28, available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

<sup>19</sup> See *id.* (detailing a net 8 percent increase).

<sup>20</sup> *Id.* at 28.

<sup>21</sup> *Id.* at 25-27.

<sup>22</sup> *Id.* at 16-18.

Once a homicide does occur, Stand Your Ground laws weaken the capacity of the justice system to enforce laws against violence. Stand Your Ground laws create additional burdens for criminal investigators who must collect evidence to disprove self-defense claims in any incident involving the use of force.<sup>23</sup> Moreover, because Stand Your Ground laws presume the use of deadly force is reasonable, law enforcement officers may only conduct a cursory investigation of an incident when, at first blush, the lethal actions taken to meet a perceived threat appear warranted.<sup>24</sup> The failure to thoroughly investigate would, in turn, hobble prosecutors' ability to make a full presentation of the facts at subsequent proceedings.

By any measure, Stand Your Ground laws undermine the fair and proper administration of justice, and merit serious attention and legislative action. Congress, therefore, should take a number of steps to address the adverse consequences of Stand Your Ground laws through federal funding mechanisms. For example, Congress should require states to collect and report data regarding the application and implementation of Stand Your Ground laws. This would include, but not be limited to, data concerning the number of homicides justified by Stand Your Ground laws and the race of the victim and shooter in such homicides. In addition, through grant money administered by the Department of Justice, Congress should require the training of state and local law enforcement that promotes fair enforcement of criminal laws (including Stand Your Ground laws where they exist),

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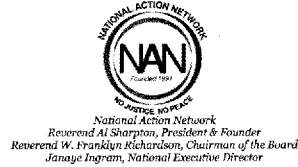
<sup>23</sup> Stephen Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine: Implications for Policy and Practice*, Nat'l Dist. Attorneys Assoc., Mar. 2007, at 9, 11, <http://www.apainc.org/files/DDF/Castle%20Doctrine.pdf>.

<sup>24</sup> *Id.* at 9.

violence reduction strategies, and efforts to reduce racial disparities in the criminal justice system. LDF strongly urges Congress to consider these and other measures to address the significant and troubling concerns raised by Stand Your Ground laws.

Thank you for the opportunity to submit this statement.

NATIONAL ACTION NETWORK, REV. AL SHARPTON, PRESIDENT AND FOUNDER,  
STATEMENT



Statement for the Record

Submitted by

National Action Network

Testimony on

“Stand Your Ground” Laws:

Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force”

Before the

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Thank you Chairman Durbin and members of the Subcommittee on the Constitution, Civil Rights and Human Rights for allowing this testimony to be submitted regarding the Stand Your Ground laws implemented across the United States. The National Action Network (“NAN”), a leading civil rights organization that fights for one standard of justice, decency and equal opportunities for all people regardless of race, religion, national origin, and gender, acting as a megaphone for the voiceless supports this hearing regarding civil rights and public safety implications of the expanded use of deadly force and looks forward to working with Congress to ensure that legislative action will be taken.

In addition to focusing on criminal justice issues like this, we are a Second Chance on Shoot First coalition partner. This coalition contains civil rights leaders, elected officials, law enforcement professionals and other Americans committed to raising awareness about “Shoot First” and other unsafe gun laws<sup>1</sup>. Most Americans favor stronger gun laws, the history of the

<sup>1</sup> <http://secondchancecampaign.org/campaign/>  
[www.nationalactionnetwork.net](http://www.nationalactionnetwork.net)  
646-380-2000



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 Janaye Ingram, National Executive Director*

gun violence prevention movements shows that federal reform, even under the most favorable political conditions, are difficult to achieve.

In the absence of comprehensive federal regulation, it is up to state and local governments to adopt policies to prevent gun violence. Strong state and local measures can address the concerns of specific communities and regions, improve community health and safety, fill gaps in federal policy, and act as a catalyst for the broader reforms our country needs. Traditionally, self-defense laws were molded by the Castle Doctrine under which a person's residence is presumed to have protections and immunities if that residence was invaded and/or possible supported claims of self-defense or justifiable homicide. In 2005, Florida became the first of nearly two-dozen states to pass a "shoot first" law that removed the requirement to retreat. This sweeping legislation sponsored by the National Rifle Association (NRA) and the American Legislative Exchange Council (ALEC), mutates the spatially of self-defense claims significantly. NRA's first female president, Marion Hammer, lobbied calling the measure the group's top priority for the year. The NRA contributed \$500, Florida's legal limit, to 23 legislators at least once in the preceding five years (22 Republicans and one Democrat) and backed Gov. Jeb Bush (R)'s re-election in 2002. In addition since 2000, the group has contributed \$165,000 to the Florida Republican Party who was the majority party in both the state house and senate. State Sen. Durell Peadar (R-FL) introduced Senate Bill 436 the "Stand Your Ground" after Hurricane Ivan in 2004, based on the case of James Workman, a 77-year-old Pensacola man who fatally shot by an intruder who entered his temporary shelter. Florida Senate passed the bill with the support of 22 of the 23 recipients of NRA funds who voted. After the law's success in Florida, Hammer pitched it to the Criminal taskforce of ALEC, who made a model to present in every state capital.



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The ramifications of Stand Your Ground law (SYG) or similar self-defense laws seemingly give immunity from criminal prosecution to individuals using defensive or deadly force or in claiming self-defense. There is no supporting evidence that these laws promote good policy for public safety. The most alarming alteration to the traditional type of law is the broad protection that extends beyond a residence into public areas. The overt language within “shoot first” extends no duty to retreat into public areas posing a threat to public safety in most states with this type of law. Everyday conflicts have a greater chance to escalate into deadly shootouts and give the shooter blanket immunity from prosecution or civil suits if they claim they felt threatened<sup>2</sup>.

To protect the sacrosanctity of life, the responsibility to retreat from attack before responding with deadly force was a crucial part of the law. Furthermore, these laws disproportionately affect racial minorities and there is no mandatory investigation into whether victims of the law were racially profiled. We have to look at options that will help prevent senseless murder and limit the accessibility to use Stand Your Ground as a get out of jail free card. National Action Network calls for a reexamination of these laws. Discretionary in nature, Stand Your Ground laws can be applied at multiple points during an investigation. In Florida, for example, if a shooter invokes the Stand Your Ground law, police can determine whether to make an arrest when they arrive on the scene. If arrested, the suspect then appears before a judge who determines whether Stand Your Ground applies to the case. If it does, the prosecutor then decides whether to go to court. The system offers substantial discretion to authorities at every level, which is difficult to monitor making it harder to control for bias.

Typically, justified and unjustified uses of force are established at the charging level as all criminal allegations are navigated through the prosecution office. Under the Stand Your Ground law, a judge administers the immunity which is problematic. Immunity ordered by a judge essentially overrides the prosecutor's charging decision without full due process or juror input.

<sup>2</sup> <http://secondchancecampaign.org/campaign/>



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As the law stands, if a defendant is successful in proving his self-defense claim at the pre-trial hearing, the criminal case is dismissed, and the defendant is deemed immune from criminal prosecution for the killing. Immunity can be granted on the judge's order alone, never being heard by a jury. In order for a murder defendant in Florida to successfully argue self-defense, he must establish that he acted with rationality in his belief that the threat he faced was first, rational to perceive as a threat, and second, was sufficiently life threatening in order to justify his use of deadly force in response. More than twenty states have copied at least portions of Florida's statute.

Florida's statute on the use of force in self-defense is virtually identical to Section 1 of ALEC's Castle Doctrine Act model legislation. ALEC praised the success of this legislation sweeping across several states initially and their 2007 legislative score card highlighted the spread of this law as one of the group's success. According to a 2002 report from Defenders of Wildlife and the Natural Resources Defense Council, the NRA has been a longtime funder of ALEC. Additionally, reaching "Vice-Chairman" level sponsor status of ALEC's 2011 annual conference and seated as co-chair of ALEC's Public Safety and Elections Task Force until spring of 2011. Now, ALEC has attempted disassociate themselves from this legislation after opponents of this law called for its evaluation. According to State records and media reports, this law has been an effective defense for an increasing number of people who have shot others.

A national debate was sparked surrounding these laws after the case of 17-year-old Trayvon Martin who was fatally shot walking to his father's home on a sidewalk in a gated community by George Zimmerman, a neighborhood watchman who called the police to report a suspicious person and began following Martin, first in a car and later on foot. Zimmerman pulled a gun from a holster on his waist and shot and killed Martin. Zimmerman claimed self-defense and was found not guilty by a jury on July 13, 2013. There are hundreds of cases in which a duty to





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retreat should have been invoked but was relinquished due to the leniency of “shoot first measures”.

On a public policy level, there is a gap in criminological research that focused solely on the evolution of castle doctrine states. Weak concealed handgun laws paired with shoot first laws provides aggressive citizens who meet very minimal requirements the right to use deadly force without ramification.

States should reassess how these laws cheapen human life and should apply their “policing power”; the power of state government to enact laws in the interests of the public health, safety and welfare of the people and vested at the core of state and local authority to regulate, possession, transfer and use of firearms.

Justifiable homicides in Florida have tripled, and other states have seen similar increases. Currently, 41 states have lax concealed weapon laws, 37 states require law enforcement officers to issue concealed handgun licenses to individual who meet very minimal requirements; four states allow people to carry concealed weapons statewide without permits. More than half of the defendants who have killed someone and used the self-defense law have repeated arrests and a criminal record. More than 50 percent of shooters, who’ve claimed self-defense in Florida specifically, had been arrested at least once before the day they killed someone under the Stand Your Ground Law. According to a June study by researchers at Texas A&M University, rates of murder and non-negligent manslaughter have increased to an additional 600 homicides per year in the states that have enacted such laws<sup>3</sup>.

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<sup>3</sup> Does Strengthening Self-Defense Law Deter Crime or Escalate Violence : Evidence from Expansions to Castle Doctrine; Cheng Cheng, Mark Hoekstra; [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf)

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Racial disparities are more pronounced under Stand Your Ground law states. A study conducted last year by John Roman of the Urban Institute, using Supplemental Homicide Reports from the FBI from 2005-2009 data along regression analysis controlling for multiple variables such as the races of the victim and the shooter, whether parties involved were strangers, if the murder was in a SYG state, and if a firearm was involved revealed that White on African American shootings are more likely to be rule justified in an SYG state opposed to a White on White, or African American on White shooting. The killings of African American people by Whites were more likely to be “justified” homicides, which as defined by the FBI is when police determine a private citizen has killed someone who is committing a felony such as attempted murder, rape or armed robbery. Moreover, African American shooters are far less likely to be found justified in a shooting<sup>4</sup>.

In 2010, Marissa Alexander a 31-year-old African American mother of three living in Jacksonville, FL was the victim of the subjective and uneven application of SYG laws. She fired a warning shot to keep her abusive husband from attacking her and received 20 years in prison despite hurting no one being hurt. Alexander’s attorney invoked the “Stand Your Ground Law,” which gives the benefit of the doubt to a shooter who feels threatened. Marissa was convicted by the jury with aggravated assault with a deadly weapon under Florida’s gun laws and was sentenced to 20 years in prison, the State requirement.

There is a need for a comprehensive investigation. SYG statutes are vague and interfere with the judicial process. On the surface they enforce, apply, and create opportunities for racial bias providing a free pass for individuals with a troubled history, disallowing equal protection under the 14<sup>th</sup> amendment by allowing individuals to shoot at will in public spaces and jeopardizing public safety. These measures lack evidence of having a defined deterrent effect. Since the

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<sup>4</sup> Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data. John K. Roman, Ph.D. ; [www.urban.org/UploadedPDF/412873-stand-your-ground.pdf](http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf)  
[www.nationalactionnetwork.net](http://www.nationalactionnetwork.net)  
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passing of this legislation in states across the country, murders have increased occurring more often contributing to some seemingly perverse outcomes. Biases for the shooter and the victim have had a disproportionate effect on minorities and women.

As an organization whose mission is to see the even and fair application of laws and protection of civil and human rights under the law, we see Stand Your Ground laws as a barrier to achieving one standard of justice under the law. This hearing is an important step toward correcting flawed legislation like Stand Your Ground. We once again thank you for allowing us to submit testimony on this matter and look forward to working with Subcommittee on the Constitution, Civil Rights, and Human Rights as well as the broader Congress on this issue in the future.

NATIONAL TAXPAYERS UNION, ALEXANDRIA, VIRGINIA, DUANE PARDE, PRESIDENT,  
AUGUST 22, 2013, LETTER



August 22, 2013

The Honorable Richard J. Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Durbin:

I am replying to your August 6 notice and inquiry on behalf of the 362,000 everyday Americans who are members of National Taxpayers Union (NTU).

Notwithstanding any other debatable claims in your correspondence, here are the answers you seek to your two questions:

1) Has National Taxpayers Union served as a member of ALEC or provided any funding to ALEC in 2013?

National Taxpayers Union serves as a member of or participant in many organizations that provide forums for policy discussions, including American Legislative Exchange Council (ALEC). NTU has not "provided ... funding" to ALEC; my organization has paid the requisite fees to ALEC for the purpose of being recognized as a member of ALEC's Tax and Fiscal Policy Task Force.

2) Does National Taxpayers Union support the "stand your ground" legislation that was adopted as a national model and promoted by ALEC?

NTU does not engage in ALEC activities that are not related to tax and fiscal policy. As an organization concerned with tax, fiscal, and economic issues, NTU does not take, and will not take, a position on so-called "stand your ground" laws.

In the interest of fairness and in light of our good-faith effort to provide a response to this constitutionally suspect inquest, I hereby request that the entirety of my letter appear in your "hearing record." I am doing so in order to affirm that NTU protests this readily apparent imposition on the First Amendment rights of our members.

Sincerely,

Duane Parde  
President

P.S. – For purposes of future correspondence as well as the record, I would ask that you inform the administrative staff who prepared your original letter that my last name is spelled "P-A-R-D-E," not "P-A-R-A-D-E." Also, please note our correct address below.

THE NEWTOWN ACTION ALLIANCE, NEWTOWN, CONNECTICUT, SEPTEMBER 17, 2013,  
STATEMENT

WRITTEN TESTIMONY OF  
THE NEWTOWN ACTION ALLIANCE

"Stand Your Ground' Laws: Civil Rights and Public Safety Implications of the Expanded  
Use of Deadly Force"

Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights and Human Rights

DATE: September 17, 2013

TIME: 10:00 AM

ROOM: Hart 216

The Newtown Action Alliance ("NAA") is a 100% volunteer based grassroots organization founded by Newtown residents in the weeks after December 14, 2012. The NAA works with other gun safety organizations towards safer schools, streets, towns, and cities. Members of the NAA travelled from Newtown, Connecticut to Washington, DC early this morning to attend this hearing and to meet with lawmakers to press for common sense measures that will reduce gun violence. We are joined by families that have lost loved ones due to gun violence and gun safety advocates from Chicago, Hartford, Aurora, Arizona, Wisconsin, Utah, Virginia, New Jersey, and Ohio. We all have experienced the pain and sorrow resulting from unnecessary gun violence in our communities. We are united by our strong desire to reverse the growing gun violence epidemic that currently plagues our communities and our Nation.

The NAA opposes Stand Your Ground or "Make My Day" laws as they are sometimes referred to, as they exacerbate an exploding gun violence problem facing America. We are honored to be here today with the parents of Trayvon Martin. Rather than stand our ground, the NAA stands with the Martin family and with families from all across America who demand that

we take back our country from the gun violence that occurs every day. Getting rid of Stand Your Ground laws is a good place to start.

Connecticut is not a “Stand Your Ground” state. To the contrary, while Connecticut does allow open carry to those who are licensed, it adheres to the traditional common law Castle Doctrine. The Castle Doctrine provides that an individual has no duty to retreat when in his or her home, or “castle,” and may use reasonable force, including deadly force, to defend his or her property, person, or another. In certain circumstances, the law permits one to attack an intruder and use a firearm instead of first retreating. Forty-six states currently employ the Castle Doctrine.

While the NAA is not looking to overturn the Castle Doctrine, we do not condone the current state of the law which permits a person’s “castle” to be converted into mini military depots. The NAA strongly urges Congress to ban military style weapons and high capacity magazines even inside one’s “castle.” In addition, the NAA is pressing for expanded universal background checks and a strong federal trafficking law. These measures are constitutional, would reduce gun violence, and at the same time allow for self-defense as the Supreme Court has currently interpreted the Second Amendment.

While the Castle Doctrine allows for the use of reasonable force inside one’s home, outside of the “castle,” however, an individual has a duty to retreat, if able to do so, before using force. Stand Your Ground laws remove the common law requirement to retreat when a person is outside of the “castle”, allowing that person to use deadly force in self-defense when there is reasonable belief of a threat. Approximately twenty states have adopted some form of Stand Your Ground. Under Florida law, a person “has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so

to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.”

The combination of expanding open-carry laws, the ease in many states to obtain an open carry permit, the proliferation of firearms of all shapes and sizes in our communities, the failure to require universal background checks, and more, results in a greater risk of gun violence in our communities, where the victims may well be innocent bystanders. In essence, these laws are empowering ordinary citizens to fire their deadly weapons in public places even though they do not have a fraction of the training of police officers as to when it is appropriate to shoot first. We have created a society where ordinary citizens can feel and act like Dirty Harry, and get away with it even when they are wrong and even when retreating and calling law enforcement was a viable option.

The upshot of these laws is that we are encouraging gun battles in our streets, in our stores and malls, and on our football and soccer fields. Emboldened citizens with no police training will continue to take matters into their own hands resulting not only in the deaths of their intended targets but also in the deaths or significant injuries of innocent bystanders, including children caught in the crossfire.

The NAA urges this Congress and statehouses throughout the United States to eliminate Stand Your Ground or “Make My Day” laws. The common law duty requiring ordinary citizens to retreat when outside his or her “castle” has served America and other civilized societies well. Reverting to this traditional standard is an important step in reversing the gun violence epidemic that plagues America, and for taking back our streets for our children.

## NEW MEXICANS FOR GUN SAFETY, PAUL SCHMITT, STATEMENT



NMexicans for Gun Safety  
 NuevoMexicanos para eliminar riesgos del armas del fuego

## "Stand Your Ground" Laws Do NOT Work

In 2012, Mark Hoekstra and Cheng Cheng\* (Economics Department, Texas A&M) studied the effects of Stand Your Ground laws in the 21 states that passed the law in various forms. The study explored the within-state variation in this self-defense law to examine its effect on homicide and violent crime.

The results of this study indicates that this type of law does NOT deter burglary, robbery or aggravated assault. In contrast, the law leads to a significant 8% net increase in the number of reported murders and non-negligent manslaughters. The study goes into great depth to explain how Mark and Cheng reduced the amount of error and eliminate a bias, one way or another, that would lead to a slanted assumption on the topic. It shows that the findings are robust in the inclusion of time, varying co-variables such as demographics, policing, economic conditions and public assistance, as well as to the inclusion of contemporaneous crime levels unaffected by Stand Your Ground law that proxy for general crime trends.

The results of the study indicate that the prospect of facing additional self-defense does not deter crime. By contrast, it found significant evidence that the stand your ground law actually lead to more homicide on the average of 600 more per year in the states that have the law on their books. It shows that the divergence in homicide at the time that the stand your ground law was enacted in any particular group of states is larger than any divergence between the same group of states at any time in the last 40 years.

In short, the findings of the study show that by lowering the threshold for justified use of lethal force results in more of it. Criminals are not deterred when victims are empowered to use lethal force to protect themselves. The legal justifiable use of lethal force only creates an atmosphere where that force will be used instead of caution and care to deter a volatile situation that can easily escalate beyond control.

Paul Schmitt  
 New Mexicans for Gun Safety

\*"Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine"

Cheng and Hoekstra, December 17, 2012 Texas A&M University

**Para un Nuevo México más Seguro**

**For a safer New Mexico**

On Facebook: [www.facebook.com/NewMexicansForGunSafety?fref=ts](https://www.facebook.com/NewMexicansForGunSafety?fref=ts)



NEW YORKERS AGAINST GUN VIOLENCE, BROOKLYN, NEW YORK, OCTOBER 29, 2013,  
STATEMENT

Written Testimony

Submitted for the record by

New Yorkers Against Gun Violence

For the hearing before the

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

On

“‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use  
of Deadly Force”

Tuesday, October 29, 2013

Thank you Chairman Durbin and Members of the Subcommittee for this opportunity to submit written testimony.

New Yorkers Against Gun Violence (“NYAGV”) is a 20-year old organization that was established by Brooklyn mothers galvanized by the senseless shooting death of a teacher in Prospect Park, and thanks to the diligent work of committed individuals, NYAGV has grown to include members in counties throughout New York State. NYAGV works to make our communities safer by strengthening gun safety laws in New York State and it was instrumental in the passage of the NY SAFE Act in 2013, one of the strongest gun safety laws in the country. NYAGV fights to defend and preserve New York’s strong gun safety laws and advocates for stronger federal gun safety laws, since states with weak laws continue to flood New York State with illegal guns.

NYAGV is concerned that so many states have adopted the poor prescription of preventing gun violence by wedding “Stand Your Ground” laws with liberal concealed carry access. Instead, NYAGV believes that enacting common sense gun violence prevention laws would work to keep guns out of the wrong hands and prevent the tragedies that tear at the fabric of our communities. Other states’ gun laws are of particular concern to NYAGV because states that have weak gun laws are the overwhelming source of guns that are used in crime in New York. In addition, the potential enactment of a federal concealed carry reciprocity law would expose New York to the wrongheaded policies that are ineffectively used to combat gun violence in these other states. New York City is a melting pot of different cultures, races, religions and sexual orientations, and there are approximately 80 million visitors to New York City each year. A federal concealed carry reciprocity law (such as H.R. 578) mixed with cultural values based on “Stand Your Ground” laws will, for example, permit a Floridian to enter busy Times Square not only with a gun at his hip, but with an attitude that if he feels afraid—even if his fear ultimately turns out to be mistaken and based on prejudice or bias—then he will be justified to “shoot first”. A person cannot pack his gun without also carrying along his cultural norms, fears and prejudices.

We oppose any effort to enact a national concealed carry reciprocity law and feel there are myriad good reasons to repeal Stand Your Ground laws in favor of enacting common sense gun violence prevention laws.

New York has strong gun violence prevention laws, elected officials not afraid to stand up to the gun lobby and, most importantly, very low rates of gun violence both as a State and in New York City in particular.

In 2010, New York had the 5th lowest rate of firearm death in the United States—a rate that was half the national average.<sup>1</sup> New York City is the nation’s safest big city and has seen a 20 year decrease in all major categories of crime.<sup>2</sup> There is still gun violence in New York—and one death is too many—but the results of New York’s good gun policy and strong enforcement has made a significant difference in ensuring low levels of gun violence and preventing guns sold in New York from being used in crime. The most recent available crime gun trace data shows that 67% of crime guns recovered in New York State are from states with weak gun laws<sup>3</sup> and 90% of crime guns recovered in New York City come from outside the State.<sup>4</sup>

New York has been a leader in preventing gun violence thanks to the will of its people and the courage of its elected officials, such as Governor Andrew Cuomo, Mayor Michael Bloomberg and Attorney General Eric Schneiderman, to stand up to the gun lobby, which represents a loud, but relatively small minority of voters. New York’s elected officials, in connection with NYAGV, have continuously worked to find legislative solutions to gun violence without infringing the rights of hunters, sport shooters and New Yorkers who own guns for self defense. In January 2013, New York passed the landmark NY SAFE Act, which, among other things, requires background checks whenever a gun is sold, strengthens New York’s assault weapons ban, bans high capacity magazines and requires background checks for sales of ammunition. New York law enforcement has discretion when issuing concealed weapons permits and there is no “Stand Your Ground” law. A “Stand Your Ground” bill was introduced in the 2012, and it was withdrawn after the Trayvon Martin shooting.

States that have weak gun laws not only export nearly all of the guns used in crime in New York State and New York City, but those states also have the highest rates of firearm death. The 26 states with some version of “Stand Your Ground” all have liberal concealed carry laws and are

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<sup>1</sup> Centers for Disease Control and Prevention, National Center for Injury Control and Prevention

<sup>2</sup> Franklin E. Zimring, *The City that Became Safe: New York’s Lessons for Urban Crime Control*, Oxford University Press (2012).

<sup>3</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Trace Data for New York for 2012*, available at <https://www.atf.gov/sites/default/files/assets/statistics/tracedata-2012/2012-trace-data-new-york.pdf>.

<sup>4</sup> Tina Moore, *Guns from out-of-state make up the grand majority of city crimes, Bloomberg attempts to push back*, N.Y. Daily News, July 31, 2013.

among the states with the highest rates of firearm death<sup>5</sup>; notably, 15 of the top 20 states for firearm death rate have “Stand Your Ground” and liberal concealed carry laws.<sup>6</sup> To exacerbate the problem of gun violence, these states have not enacted the common sense policies, such as requiring a background check whenever a gun is sold, that would keep guns out of the wrong hands and reduce gun violence.

In general, “Stand-Your-Ground” laws enable a person who believes his safety is threatened to use deadly force in self-defense in public places, rather than to retreat from a confrontation. The principle underlying the “Stand Your Ground” laws to react with deadly force in the face of fear is misguided. This expansion of the legal principle of self-defense is not necessary to protect victims and has not led to a decrease in gun violence. In fact, we believe that the legal encouragement to engage in violent confrontation will likely lead to more gun deaths as private citizens are not trained to handle and make judgments about confrontations in the way that police officers are.

The impact of “Stand Your Ground” laws has been an increase—not a decrease—in violence. Many states that have adopted “Stand Your Ground” laws have seen significant increases in the occurrence of “justifiable homicides” committed by private citizens.<sup>7</sup> According to a study by Texas A& M University, homicides increased by 8% over a 10-year period (2000-2010) in states that enacted “Stand Your Ground” laws.<sup>8</sup> Furthermore, the study concludes that the laws do not deter burglary, robbery or aggravated assault. According to a review of FBI data by the Washington Post, in the five years before passage of the Florida “Stand Your Ground” law, the state had an average of 12 justifiable killings per year. However, in the five years since the law has passed, the average number of justifiable killings per year has tripled. Investigations by the *Tampa Bay Times* found that in 2010, the “Stand Your Ground” law was invoked in at least 93 criminal cases involving 65 deaths. In 2012, the investigation found that the number of cases had increased to 130, over 70% of which involved a death.

“Stand Your Ground” laws become more dangerous when paired with laws that grant large numbers of people licenses to carry concealed firearms in public places. 35 states require law enforcement officers to issue concealed handgun licenses to individuals who meet very minimal

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<sup>5</sup> Arkadi Gerney, Chelsea Parsons and Charles Posner, *America Under the Gun: A 50-State Analysis of Gun Violence and Its Link to Weak State Gun Laws*, Center for American Progress, April 2013.

<sup>6</sup> Centers for Disease Control and Prevention, National Center for Injury Control and Prevention; Law Center to Prevent Gun Violence Policy Summary, July 14, 2013, <http://smartgunlaws.org/shoot-first-laws-policy-summary/>.

<sup>7</sup> Law Center to Prevent Gun Violence Policy Summary, July 14, 2013, <http://smartgunlaws.org/shoot-first-laws-policy-summary/>.

<sup>8</sup> Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, 2012, available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

requirements; four states even allow people to carry concealed weapons statewide without permits. An analysis of news reports by the Violence Policy Center has identified at least 502 people, including 14 law enforcement officers, killed nationwide by individuals with concealed handgun licenses since May 2007.<sup>9</sup> In a well know example, Florida's concealed handgun licensing law enabled George Zimmerman—who had been previously arrested for battering a law enforcement officer, had a restraining order issued against him in 2005 amid allegations of domestic violence, and whose neighbors had complained about his aggressive behavior—to legally carry a hidden, loaded handgun in public.

New York has dealt with the public health crisis of gun violence in a proactive way and without encouraging its citizens to carry guns and shoot first. The result is that New York has safer communities, and lower rates of gun violence than the states that have mistakenly, and tragically, employed concealed carry and “Stand Your Ground” laws as the legislative solution to reducing gun violence. We do not support a national concealed carry reciprocity law; “Stand Your Ground” laws and the reckless and dangerous behavior they encourage is a strong reason why it would be a mistake to allow visitors to New York to bring concealed weapons—and their attitudes on when and how to use them—into our State.

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<sup>9</sup> Violence Policy Center, *Concealed Carry Killers*, available at <http://www.vpc.org/ccwkillers.htm>.

PHILLIP ATIBA GOFF, PH.D., TENURE-TRACK FACULTY, UNIVERSITY OF CALIFORNIA,  
LOS ANGELES (UCLA), STATEMENT

Testimony prepared by Phillip Atiba Goff, PhD for Senate Judiciary Testimony on “Stand Your Ground” laws

**Qualifications:**

I am a social psychologist specializing in identity and social justice issues—particularly race and gender. I received an A.B. in Afro-American Studies from Harvard University and an M.A. and Ph.D. in social psychology from Stanford University. I am currently employed as tenure-track faculty at the University of California, Los Angeles (UCLA) in the psychology department and was an assistant professor at the Pennsylvania State University in the psychology department prior to that. My areas of expertise are in the fields of stereotyping, prejudice, and discrimination—especially violence; identity-based threats; gender and sexuality discrimination; contextual approaches to social inequality; and social psychology and law, particularly with regard to policing. I currently serve on the American Psychological Association (APA), Division 8 Task Force on Gun Violence and have relied on the committee’s expertise in preparing this testimony. Finally, I am the Executive Director of Research for the Center for Policing Equity, a research and action think tank that works with law enforcement to provide evidence-based approaches to racial and gender equity concerns. A recent copy of my CV (September, 6, 2013) has been provided in an *Appendix*, attached to this report. My written testimony relies upon published and well-established research in the field of social psychology.

**A Note on Methodology:**

Social psychology is a discipline principally concerned with how situations affect the behavior of individuals. Situations can be understood both in terms of the immediate qualities of a given context (i.e. the size or color of a room, the expectations placed on a test taker, the racial make-up of one’s audience) and in terms of more enduring qualities (i.e., being a resident of the United States, being a native Spanish speaker, being a woman).

Because of the nature of experiments (and their preponderance in the field), knowledge amassed in the field of social psychology cannot be generalized with 100% certainty to any specific instance. Rather, social psychology is able to speak in the aggregate about factors that tend to create behaviors or other social outcomes. The opinions rendered in this document, therefore, reflect the best scientific knowledge regarding sources of general causation (i.e. factors that tend to cause particular outcomes in the research literature) in an attempt to inform fact finders regarding the specific causations in the case at hand. This approach to applying social science research, referred to as *Social Framework Analysis* (Borgida & Fiske, 2007; Goodman & Croyle, 1989), has an established and growing history of acceptance in litigation and the legal profession generally (Hunt, et al., 2002; Borgida, Hunt & Kim, 2005).

**Stand Your Ground (SYG) Laws and Psychology:**

The discipline of social psychology has much to contribute to the debate about the possible consequences of SYG laws on individuals and communities. However, perhaps the two most striking concerns are these: There is significant evidence suggesting that **SYG laws are likely to increase racial biases in the use of deadly force** and that **SYG laws are likely to increase aggressive and vigilante behaviors**. I expand on each, briefly, below:

### **SYG Laws and Implicit Bias:**

Contrary to lay definitions, stereotyping is a universal human psychological tendency that extends from the mind's tendency to take shortcuts as we make sense of the world (Fiske & Taylor, 1984). That is, it is common for even explicitly egalitarian individuals to employ common stereotypes, often without even being aware that they have done so (Devine, 1989). Importantly, these *implicit biases*—automatic and uncontrolled associations between groups and their stereotypes—can influence behavior, even in spite of an explicit desire to suppress them (Dovidio, Kawakami, & Gaertner, 2002; Macrae, Bodenhausen, & Milne, 1994), or an individual's lack of awareness that the stereotypes exist (Goff, Eberhardt, Williams, & Jackson, 2008). Given the pervasiveness of implicit biases, and the notorious difficulty individuals have suppressing them, psychologists have invested significant energies searching for contexts that inhibit—or exacerbate—the expression of implicit biases. A careful study of this literature suggests that SYG laws are likely to have an adverse affect on racial biases in situations where gun violence is possible. There is one primary reason for this: implicit biases are likely to be *exacerbated by cognitive load* which is likely to occur when lethal force is being considered, particularly if the target is non-White.

### **Implicit Bias and Cognitive Load**

There are at least three kinds of cognitive load that can exacerbate individuals' tendencies to act on implicit biases: time pressure, ambiguous contexts, and fear, particularly the fear of death. Again, all three are likely to be present when deadly force is considered. The need to make a quick decision tends to force individuals to rely more on implicit biases by sapping the brain of cognitive resources, causing an individual to rely more on overlearned associations (Park, Glaser, & Knowles, 2008; Payne, 2006). Obviously, the decision to discharge a firearm is frequently made in a fraction of a second, and it is unrealistic (and likely undesirable) to hope decision-makers will exert effort to reduce implicit biases while making a life or death decision.

Similarly, when norms for behavior are not clear, and/or negative behavior can easily be rationalized, implicit biases are more likely to influence behavior (Dovidio & Gaertner, 2000). In these context, individuals cannot rely either on the behavior of others or on clearly defined expectations for their own behavior to protect against the mental shortcuts of implicit bias. Consequently, it is more likely under these circumstances that stigmatized group members will be negatively evaluated (Dovidio & Gaertner, 2000) or become targets of violence (Goff et al., 2008; 2013) for no reason other than their race. Because scenario-based training is rare among civilians, involving lethal force will often appear to have ambiguous behavioral norms.

Finally, fear of losing one's life, itself, can provoke reliance on negative stereotypes. In one set of studies, simply contemplating death led participants to behave more aggressively towards those who were different from them (McGregor et al., 1998). Again, the relationship between this literature and SYG legislation is clear.

These three factors, in and of themselves, tend to produce higher levels of racial bias. When they occur together, they represent a kind of "perfect storm" of factors to produce racial biases, even in extreme behaviors such as real life violence (Goff et al., 2013). Consequently, the psychological science suggests that the contexts surrounding SYG laws are ripe to produce significant racial disparities in the use of lethal force towards stigmatized civilians.

### **SYG Laws, Aggression, and Vigilantism:**

In addition to concerns regarding racial bias, a sizeable literature in social psychology suggests that SYG may lead to increased aggression and vigilantism amongst citizens. Particularly the literatures on what some scholars call the “Culture of Honor” is relevant to this concern (Nisbett & Cohen, 1996). A Culture of Honor is one in which a man’s social reputation is central to his economic prospects and results in cultural emphases on masculinity, toughness, self-reliance, and violence as justified in the context of defending one’s masculine reputation.<sup>1</sup> The key elements of a Culture of Honor with regards to SYG laws, aggression and vigilantism are: 1) the tendency for masculinity threats, generally, to produce aggressive responses, 2) the increase in this tendencies in cultures in which “saving face” is seen as a reasonable justification for using violence, and 3) the possibility that SYG laws may be interpreted as sanctioning this face-saving justification for violence.

Previous research on threats to masculine self-concepts suggest that even relatively minor threats to one’s normative masculine self-concept can produce aggressive behavior in even individuals who do not tend towards violence (Bosson & Vandello, 2011; Bosson, Vandello, Burnaford, Weaver, & Wasti, 2009; Vandello, Bosson, Cohen, & Burnaford, 2008; Vandello & Cohen, 2008). Importantly, research has also consistently demonstrated that cultural norms permitting violence, or rationalizing it in the defense of one’s honor or masculine identity increase the likelihood that violence will be used, both in laboratory settings and in the world (Bosson & Vandello, 2011; Nisbett, & Cohen, 1996; Vandello & Cohen, 2008). The nature of SYG laws can easily be construed as justifying violence in the name of one’s honor, in both the language of the debate that has surrounded them (Aggergaard, 2002) and in the sense that the law formally removes the duty to retreat—in essence sanctioning “standing up for one’s self” in context where one’s honor is likely to be at stake. In fact, it may be said that SYG laws are in some ways a legislative articulation of a Culture of Honor System. While it is not the place of psychological science to cast aspersions on cultural systems, there is a significant body of research demonstrating that such systems are prone to higher levels of violence, increased forgiveness of violence, and more forgiving norms about when individuals are justified in engaging violence to solve problems (Bosson & Vandello, 2011; Nisbett & Cohen, 1996; Vandello & Cohen, 2008). These factors lead me to have serious concerns about the possibility that SYG laws will lead to relatively permissive cultural norms around violence and the sense that non-police citizens should feel justified in availing themselves of violent means to solve community problems if they feel it necessary.

### **Concluding Thoughts:**

Taken together, psychological science suggests there are grave reasons for concern that SYG laws will facilitate increases in civilian use of force and that this force will be applied in a racially disproportionate manner. While the need to protect those who fear for their lives is an important value of any society, laws designed to protect the right to self-defense must ultimately be judged in light of the harms to life and fairness those laws produce. In my considered opinion, there is significant scientific evidence to suggest that SYG laws may promote violence and bias—outcomes that should be avoided in any legislation if at all possible.

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<sup>1</sup> Culture of Honor research has been relatively less clear about implications for women and cultural definitions of femininity.

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PROTEST EASY GUNS, SEPTEMBER 14, 2013, STATEMENT

**Protest Easy Guns**

Statement for the Record

September 14, 2013

**Hearing Before the Senate Judiciary Subcommittee on the Constitution,  
Civil Rights, and Human Rights**

***"Stand Your Ground" Laws: Civil Rights and Public Safety Implications  
of the Expanded Use of Deadly Force***

Protest Easy Guns strongly believes that Florida-style "Stand Your Ground" laws should be repealed, or at least heavily amended. SYG laws give someone broad authority and immunity in slaying another person during a confrontation, even if they were able to retreat or not in mortal danger. Coupled with lax concealed-carry laws, this needlessly puts people in danger of being killed over innocuous everyday spats. SYG in Florida has let drug dealers go free, similar scenarios have had differing results because of lack of clarity in the law, and in a third of cases, defendants initiated the fight, shot an unarmed person or pursued their victim — and still went free.

Touted as a public safety measure, states with SYG have an average of up to seven more homicides per month. Even worse, SYG has glaring racial discrepancies: In non-SYG states, whites are 250 percent more likely to be found justified in killing a black person than a white person who kills another white person; in SYG states, that number jumps to 354 percent.

Misdemeanants and persons with a history of arrests or weapons convictions have a high recidivism rate, and this plays into SYG. A recent Tampa Bay Times investigation found a staggering number of persons with criminal records or violent pasts citing SYG in Florida: Nearly 60 percent of those who claimed self-defense had been arrested at least once before the day they killed someone; 40 percent had three arrests or more; and more than a third of the defendants had previously been in trouble for threatening someone with a gun or illegally carrying a weapon. A majority of SYG defendants with one prior arrest go free.

SYG is not about self-defense. It is about enabling armed persons to needlessly take a human life and then be absolved from any legal or civil culpability.

**Protest Easy Guns**

*Social Movement of Americans Fighting for Sane Gun Laws to Save  
American Lives*

JOHN ROMAN, SENIOR FELLOW, URBAN INSTITUTE, WASHINGTON, DC, STATEMENT

Written Testimony Submitted for the Record

by

**John Roman**

Senior Fellow, Urban Institute

before the

Senate Committee on Judiciary

Subcommittee on Constitution, Civil Rights and Human Rights

**'Stand Your Ground' Laws: Civil Rights and Public Safety Implications  
of the Expanded Use of Deadly Force**

Tuesday, October 29, 2013

10:00 AM

John Roman is a Senior Fellow at the Urban Institute. He is indebted to P. Mitchell Downey for his assistance in preparing the research this testimony is based upon. The views expressed here, however, are Roman's own and should not be attributed to the Institute, its trustees, or its funders, or to any other person or organization with which he is affiliated.

Chairman Durbin, Ranking Member Cruz, and Members of the Committee, I thank you for the opportunity to testify about the effect of Stand Your Ground (SYG) laws on civil rights and public safety.

#### 1. The Policy Problem

There are racial disparities throughout the juvenile and criminal justice system in America. African Americans are more likely to be stopped and frisked, to have their motor vehicle searched at traffic stops, and to receive longer prison sentences than are whites. One area of possible racial disparity—differences in findings that a homicide was ruled justified prior to a trial—had little attention before the investigation and trial of George Zimmerman for the murder of Trayvon Martin. Using data from the Federal Bureau of Investigations Supplementary Homicide Report (SHR), my research examined the effects of racial disparities in justifiable homicide findings on public safety:

- Are there racial disparities in the justification of homicides? That is, are homicides by shooters of differing races, or involving decedents of different races, ruled justified at different rates?
- Is the degree of disparity higher or lower in states that have SYG laws than in states that do not?
- In states with SYG laws, did the degree of disparity increase or decrease when SYG laws were passed?

The answer to the first questions is clearly yes. The starkest contrast is between homicides of blacks committed by whites, of which 11.4 percent are justified, and homicides of whites committed by blacks, of which 1.2 percent are justified.

The answer to the second question is also clearly yes. States with SYG laws have higher disparities than states without SYG laws.

The answer to the third question is the most complex and relies on the smallest set of data. My preliminary answer to this question, too, is yes.

Before I turn to the details of how I reached these conclusions, let me summarize the implications of these findings. Justification of homicides is used in a racially disparate manner, and more so in states with SYG laws. Whether SYG laws are more likely to be enacted in those states with more disparity in justifications, and whether SYG laws increase the degree of disparity, or both, is not yet completely clear. But the implications are disturbing regardless. The purpose of enacting SYG is to increase the rate of justifiable homicide findings. In doing so, SYG could make disparities better, worse, or keep them constant. There is no evidence SYG reduces disparities in the SHR data. If it makes disparities worse, as our study suggests, that is poor policy. If it simply keeps the disparities the same but increases justifiable homicide findings, then it increases the number of people exposed to the disparity, which is also poor public policy.

## 2. The Research

After a homicide (including manslaughter), law enforcement submits additional information about the details of each case to the FBI, which makes those data publicly available through the SHR. Data from 2005 through 2010 (the latest year available) were downloaded from the National Archive of Criminal Justice Data maintained by the University of Michigan. In total, there were 82,986 observations across six years of data. This study used only those observations for which information about both victim and offender was available, which will only be possible in cases where the perpetrator was known (in 28,001 cases, the offender was not known or demographic information about the victim was unavailable). And, only those observations with a white or black victim-offender combination were retained (1,966 cases were excluded, including relatively similar numbers of cases across the four race groups [white, black, Asian or Pacific Islander, and American Indian or native Alaskan]).<sup>1</sup> The final dataset included 53,019 observations.

## 3. Public Safety, Civil Rights, and Justifiable Homicide

From these data, four binary variables were coded that described each cross-race combination for white and black perpetrators and victims (white-on-black, black-on-white, black-on-black, and white-on-white). For all analyses, the reference group was white-on-white homicides. Overall, 44.14 percent of homicides were white-on-white, 43.18 percent were black-on-black, 8.77 percent were black-on-white, and 3.91 percent were white-on-black. Twenty-seven percent of homicides occurred in SYG states in the year(s) following the adoption of a SYG law.<sup>2</sup>

Overall, 2.57 percent of homicides in the six-year period were ruled justified (1,365 out of 53,019). White-on-black homicides were most likely to be ruled justified (11.4 percent), and black-on-white homicides were least likely to be ruled justified (1.2 percent), and that disparity is statistically significant. That statistically significant difference remains after the analysis controls for other explanations for the disparity. Controlling for all other case attributes, the odds a white-on-black homicide is found justified are 281 percent greater than the odds a white-on-white homicide is found justified. By contrast, a black-on-white homicide has barely half the odds of being ruled justifiable. Statistically, black-on-black homicides have the same odds of being ruled justifiable as white-on-white homicides.

## 4. Stand Your Ground and Civil Rights

Overall, states with SYG laws have statistically significantly higher rates of justifiable homicides than non-SYG states. The presence of a SYG law is associated with a statistically significant increase in the likelihood a homicide is ruled justified for white-on-black, black-on-black, and white-on-white homicides. The change in likelihood for black-on-white homicides being found justified is not significant.

<sup>1</sup> The study uses race as defined by the US Census, rather than ethnicity. Combining race and ethnicity would have severely limited the power of the analysis as some race-ethnicity combinations have few observations in the data.

<sup>2</sup> The list of SYG states was obtained from the American Bar Association's Stand Your Ground National Task Force.

Comparing the three race combinations in SYG states to white-on-white homicides in SYG states finds that there is no difference in the odds of black-on-black homicides being found justified in SYG states. However, white-on-black homicides have statistically significantly higher odds of being found justified in SYG states, and black-on-white homicides have lower odds of being found justified.

#### 5. Discussion and Conclusion

There are three important notes in interpreting these findings. First, in my research, the phrase “racial disparity” is value free: the presence of a racial disparity is a necessary but insufficient condition to identify racial animus in criminal case processing. Distinguishing racial animus within racial disparities is exceedingly difficult as existing datasets do not include such key measures as setting and context. However, the magnitude of the disparity is such that there can be no doubt that the disparity is real.

Second, every homicide that was not missing an important variable was included in this analysis; there was no sampling. The data are a census of all homicides in the United States between 2005 and 2010, where valid data was reported to the FBI. Third, the Bureau of Justice Statistics does not include Florida homicides in the data, because of how the data are reported. Given Florida’s size, and the unique aspects of its SYG law, particularly the immunity provision, including Florida might have a meaningful impact of the outcomes.

In conclusion, there is a substantial racial disparity in pre-trial findings that a homicide was a justified killing of a felon by a private citizen. Regardless of how the data are analyzed, substantial racial disparities exist in the outcomes of cross-race homicides. These findings hold throughout the analysis, from differences in average rates to bivariate tests of association to regression analysis. In addition, the recent expansion of Stand Your Ground laws in two-dozen states appears to worsen the disparity.

INSTITUTE FOR POLICY INNOVATION, BARTLETT D. CLELAND, LEWISVILLE, TEXAS,  
AUGUST 31, 2013, LETTER



August 31, 2013

The Honorable Richard J. Durbin  
United States Senate  
Washington, DC 20510

Dear Senator Durbin,

I was pleased to receive your letter to the Institute for Policy Innovation, the organization I represent at the American Legislative Exchange Council (ALEC). Not only do I attend the meetings but I also co-chair of the Communications and Technology Taskforce. IPI's letter of response can be found at ([http://www.ipi.org/ipi\\_issues/detail/response-letter-to-senator-durbin](http://www.ipi.org/ipi_issues/detail/response-letter-to-senator-durbin)), but as you deemed it appropriate to send the letter through me, and given my taskforce leadership role at ALEC I wanted to respond as well.

I appreciate that you reached out for several reasons but not least of which is because we have much in common. For example, we are both land owners in Illinois.

And while you were born and raised in East St. Louis, I was born in Granite City, adopted out of East St. Louis and raised in Belleville. Perhaps because of that southern Illinois influence we both have respect for Senator Paul Simon. You have mentioned him as your friend and mentor.

I remember fondly the sessions he would have in the Dirksen building for any constituents who happened to be in town and smile as I remember my attendance, one time captured in a picture of the Senator and me, a picture which to this day hangs in my office. I always admired the way he operated. As one obituary recalled "He was an incredibly effective politician in the best sense of the word." Simon's integrity may have looked like naivete in an era when a 'gotcha' mentality tends to drive politics and journalism, says Mikva, who was White House counsel in the midst of Simon's 1985-1997 Senate tenure. "Paul never operated that way. He would try to woo you on his own terms." He was incorruptible, never exhibited ill-will or threw around his clout."

We also both received a Jesuit law school education and became attorneys. Admittedly I stayed closer to home at Saint Louis University while you went to Georgetown, but I have no doubt that the same Jesuit values were conveyed. That is, according to Peter Hans Kolvenbach, S.J., Superior General of the Society of Jesus, "The service of faith through the promotion of justice..."

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And while we both worked in D.C. we certainly came to town in much different capacities though I suspect with something similar in mind – to help improve the country as best we can and to stand by that oath, “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.”

I am sure that you, like me, carried southern Illinois values with you—hard work, honesty, self-sufficiency, straight talking, problem solving and clear common sense—to use as a guide in living up to that oath and doing right by all the country but also by those folks back home.

Because of the respect that I have for so much of our similar histories, and the values we were both taught, I was shocked at the clear purpose and tone of the letter that you sent on the afternoon of August 8th. Such a probing letter, demanding to know what we believe, with whom we associate and how we budget our expenditures can only be described as chilling.

I recently read that your office responded to the widespread outrage over the letter by saying that the intent was not to intimidate, and not to be chilling. If you did not know that the letter would intimidate then the real shame is on you for being so out of touch. The shame is on you for not understanding the impact of such a letter especially in a time of questionable investigation and characterization of the press by the Department of Justice, the probing into certain private citizens by the Internal Revenue Service as urged by you and the blatant and illegal spying on U.S. citizens by the National Security Agency. The shame is on you for being so distanced from your constituents and the values you were taught that you failed to see the letter for what it is—simple school yard bullying. If such bullying occurred to children on the playground we would all immediately clamor for the offender to be punished. Yet that bullying strikes you as acceptable and defensible?

If, as you claim, this is “This is about transparency.” Then let’s have a conversation, without bullying, about why a 501c3 should disclose its donors. I am sure that any number of c3 organizations would be happy to participate as would tax code, and public policy, thinkers.

I note that you also have publicly responded, defending your letter, saying that essentially it is not fair that you, as an elected official, are treated differently than private citizens. More specifically, you have expressed displeasure that you must disclose your donors



even while organizations do not have to disclose donors or members. You even go so far as to point out that you defend the public policy positions you take.

Very much with all due respect, I am not sure if the right reaction to this argument is to cry or laugh. You are elected by the people, the American public, of course you should have to disclose who pays for your campaigns. Of course you should have to stand up and defend your positions. Of course you should have to "face the scrutiny of public opinion." And let's make clear that you want to do those things because it is those very things that allow you to be re-elected.

Private individuals, and organizations, are an entirely different matter. In fact, that you do not see your public elected official position differently than private citizens is perhaps the very disconnect that leads you to believe that you can send letters to people demanding to know what they believe and with whom they associate. Private citizens and organizations are allowed, in this great country, to be "secretive about members and donors." I would be more than happy to go through the history that leads us to this decision as a nation. We have seen what happens, over and over again, when governments make such practices illegal or even move in a direction that makes the exercise of such liberty seem unseemly.

To be clear, law making bodies do work best in sun light, and if laws, instead of ideas were being made then I might agree with at least some part of your letter. Western history has a revered tradition of non-government thinkers developing ideas, some chose to promote those ideas, sometimes others have promoted the ideas, and some have mused to themselves with no promotion. Ideas come from many quarters, and historically most of our greatest thoughts have come not from government but from other places. Again, that you do not seem to understand the difference between groups that promote thoughtful interactions and government, particularly legislative bodies, is cause for alarm.

The foundation of the questioning is also troubling – that is, that because someone is involved in some organization, event, or are friends with someone that they must defend anything that friend or group does.

Do you support everything that any organization of which you are or have been a member supports? Do you now or have you ever supported every tenant and action of Roman Catholicism and its history? What about those who invest in you, your political donors? Do all of them do everything in line with your views? Just to pick one group, the Roman Catholic religion has many skeletons, as do the Jesuits. Certainly you do not defend them and yet you still remain associated with such groups. Sometimes the right answer is to improve things rather than destroying, to work to fix problems, rather than to stand on the outside and throw stones.

Political games aren't cute, they aren't cool, they don't help the country or Illinois, and they certainly are not leadership. When do real federal issues matter more than party politics and one upmanship? Don't you owe it to yourself to reach higher and do better, much less owe it to the nation, and to the people of Illinois? Is this the highest and best we can expect of this generation of elected officials?

In fact, Illinois should be a daily reminder. You will recall that not all that long ago, statewide races were routinely won by Republicans, but ultimately they played games in state politics and eventually lost it all. For the last many years Democrats have routinely won. The game playing, the putting of politics before policy and serious leadership, continued and the state fell apart – and is a sad sight today. Is that your desired legacy?

The demonstrated lack of actually caring about the policy issues you raised is stunning and gives proof to the thesis that this is mere politics.

I found it disturbing that given the importance you say you place on this issue that you did not even take the time to sign the letter. Did not even have a staff member auto-pen it. I know that sounds petty but then again so is giving anything the "white glove" test. If you were to go into a dusty restaurant what would you expect of the food quality? But further, you clearly did not even look at IPI's website, where ALL of IPI's scholar writings are listed and searchable. You could have answered your question without a letter aimed at stirring up a public drama, without choosing political tricks over leadership.

If you really cared about the issues you raise, you wouldn't seek to intimidate members of some private organization. Rather, why not speak to the elected officials and other leaders in Florida, and in other states, about repeal of ideas and legislation that you find offensive? Why not engage the country in a debate on the issue and encourage the citizens in individual states to act? You have only sought to use the issue as a tool to go after an organization with which you do not agree.

The obvious lackadaisical approach might best be explained by the fact that as Chairman of the U.S. Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights that you know that pressuring any private organization to answer the sorts of questions you posed clearly exceeds your authority. But really, whether you can ask such questions is not nearly so important as whether you should.

You should, constantly, be looking for ways to guarantee that the government protects our Constitutional rights, not find ways to skirt the letter and spirit of those protections. But further, I wonder if Paul Simon would have thrown around his clout in this way, if the Jesuits would see the stepping on the rights of others as the promotion of justice, or whether abusing powers trusted to you to further political, or even a policy, agenda would

be deemed appropriate. Is there room in that Senate oath to style a political Kabuki to meet political goals? Would the average laborer or farmer of southern Illinois be proud of their representative to the U.S. Senate, a native son, for acting in such a way? I think we both know the answers to these questions.

I look forward to chatting with you at the hearing the morning of September 17th. I can only assume I will be invited to actually have a conversation with you instead of just being a useful foil for your written unilateral intimidation. We can embark together to begin a real conversation, a discussion, without political games that seeks to address an issue. We can embark together to live up to those lofty and worthy ideals so tightly held by the people back home.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bartlett D. Cleland', with a stylized flourish at the end.

Bartlett D. Cleland  
Institute for Policy Innovation

NATIONAL URBAN LEAGUE, NEW YORK CITY, OCTOBER 29, 2013, STATEMENT



National  
Urban League

Empowering Communities.  
Changing Lives.

Statement for the Hearing Record

Before the

Senate Judiciary Subcommittee on the Constitution,  
Civil Rights and Human Rights

On

**"Stand Your Ground" Laws: Civil Rights and Public Safety Implications  
Of the Expanded Use of Deadly Force**

October 29, 2013

Chairman Durbin, Ranking Member Cruz, members of the Subcommittee, thank you for the opportunity to present our views on the pernicious expansion in the use of deadly force under the guise of public safety and self-defense through enactment of "Stand Your Ground (SYG)" (also known as "Shoot First") laws in some 22 states across this nation since 2005. We applaud the Subcommittee for holding this most timely hearing. ***The National Urban League finds that these unfair laws serve only to perpetuate an unequal system of justice with lethal consequences that disproportionately impacts communities of color – especially African-American males – and we therefore call on those states that have Stand Your Ground laws on their books to immediately repeal them.***

The tragic miscarriage of justice that occurred in the 2012 murder of 17-year-old Trayvon Martin and subsequent not guilty verdict in the trial of his killer, George Zimmerman, has sparked national outrage and raised awareness about state-enacted "Stand Your Ground" laws generated by the American Legislative Exchange Council (ALEC)'s "model" law and supported by the National Rifle Association (NRA). Immediately following Trayvon Martin's murder and before George Zimmerman's arrest, the President and CEO of the Central Florida Urban League, Allie Braswell, served as a leading voice in calling for Zimmerman's arrest and called for a repeal of Florida's Stand Your Ground law. Mr. Braswell subsequently testified on behalf of the Urban League and the Second Chance on Shoot First Campaign before the Florida Task Force on Citizen Safety and Protection on September 13, 2012, and as a result, forwarded his recommendations for reforming Florida's SYG law in a letter to Florida Governor Rick Scott.

With respect to the Trayvon Martin case, the National Urban League and Urban League Movement, along with the NAACP, National Action Network, the Black Women's Roundtable and the National Council of La Raza, sent a letter to Attorney General Eric Holder commending the decision by the Department of Justice to keep its investigation

open while working to determine whether civil rights statutes were violated and whether federal prosecution is appropriate. ***We also strongly urged the Department of Justice to pursue such a federal criminal civil rights investigation to the fullest extent.***

#### The Impact

Essentially, Stand Your Ground laws extend the Castle Doctrine and allows for the use of lethal force in the defense of not only one's home, but also in public spaces with no duty to retreat from danger. Some of these laws further extend the rights of the shooter by not allowing police to arrest a shooter unless they have probable cause that their claim of self-defense is untrue.<sup>1</sup> Since these laws have come to the nation's attention, there have been numerous studies on the dangerous impact and racial bias of SYG/Shoot First laws around the country. For example:

- A Texas A+M study distributed by the National Bureau of Economic Research looked at 20 states with Shoot First laws, including Florida, and found not only that the law did not deter violent crime, but they found a clear increase in homicides in those states — with up to 700 more people nationwide killed every year.<sup>ii</sup>
- A recent analysis by John Roman, Urban Institute, of the latest available data pertaining to homicides that are considered "justifiable" is revealing a grave concern about the use of STG laws and their impact on especially African Americans. According his analysis of the latest available 2010 FBI data from Supplemental Homicide Reports (SHR)<sup>iii</sup>:
  - Overall, less than 2 percent of homicides were ruled to have been self-defense. However, in SYG states after SYG enactment, it is closer to three percent, and in non-SYG states, it is close to one percent (that difference is statistically significant).<sup>iv</sup>
  - When the shooter and victim are of different races, there are substantial differences in the likelihood a shooting is ruled to be justified.<sup>v</sup>
  - When the shooter is black and the victim is white, the shooting is ruled justified in about 1 percent of cases, and is actually lower in non-SYG states. Between 2005 and 2010, there were 1,210 homicides with a black shooter and a white victim — the shooting was ruled to be justified in just 17 of them (about 1 percent).<sup>vi</sup>
  - The story is completely different when there is a white shooter and a black victim. In the same period, there were 2,069 shootings where the shooter was white and the victim black. The homicide was ruled to be justified in 236 cases (11 percent). In SYG states, almost 17 percent of white-on-black shootings were ruled to be justified.<sup>vii</sup>
  - The analysis tested whether these racial disparities remained when controlling for whether the victim and perpetrator were strangers, the state where the incident occurred, the year of the homicide, and whether the shooting occurred in a SYG state. **The racial disparities remained large and significant.** [Emphasis added.] In fact, the odds that a white-on-black homicide is ruled to have been justified is more than 11 times the odds a black-on-white shooting is ruled justified.<sup>viii</sup>
  - While it is noted that no dataset will ever be sufficient to prove that race alone explains these disparities, there are disparities in whether homicides are ruled to be self-defense, and race is clearly an important part of the story.<sup>ix</sup>

In the state of Florida where Trayvon Martin was murdered, the impact of their SYG law is especially compelling. According to an investigation by the *Tampa Bay Times* published in June 2012,<sup>x</sup> "Defendants claiming 'stand your ground' are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white."

The *Tampa Bay Times* investigation also raised serious public safety concerns. They found that as SYG claims have increased so too has the number of Floridians with guns.<sup>xi</sup> At the time of their investigation, the *Tampa Bay Times* found that concealed weapons permits stood at 1.1 million, three times as many as in 2005 when the law was passed.<sup>xii</sup> A Florida State University professor emeritus, who also worked as a police officer, cited by the *Tampa Bay Times*, raised the public safety concern that the Stand Your Ground law has an "emboldening effect" where all of a sudden, "you're a tough guy and can be aggressive."<sup>xiii</sup> And further, that "criminologists say that when people with guns get the message they have a right to stand and fight, rather than retreat, the threshold for using that gun goes down."<sup>xiv</sup>

#### Taking Action Against "Stand Your Ground Laws"

A number of initiatives and actions are under way across the country investigating, gathering data, and/or calling for reform and/or repeal of SYG/Shoot First laws in states that have them on their books.

The **American Bar Association (ABA)'s National Task Force on Stand Your Ground Laws**, began its work in January 2013.<sup>xv</sup> As its first step, the task force gathered input on the laws at a series of four public hearings held in Dallas (TX), Chicago (IL), Philadelphia (PA) and San Francisco (CA).<sup>xvi</sup> The primary sponsor of the task force is the ABA Coalition on Racial and Ethnic Justice, which identified the key issues that the task force will address such as: do stand-your-ground laws make our society safer or more dangerous; do they save lives, or do they take more lives; are they neutral, or do they disproportionately impact people of color.<sup>xvii</sup>

The **National Bar Association (NBA)**, the nation's oldest and largest association of African American lawyers and judges announced on July 29, 2013, that it is seeking to repeal the 24-plus state Stand Your Ground laws as part of its "Call for Justice" initiative in conjunction with the families of Trayvon Martin and Hidayat Pendleton and Martin family attorneys.<sup>xviii</sup>

At its 36<sup>th</sup> Annual Legislative Conference in December 2012, the **National Black Caucus of State Legislators** included among its 2013 Ratified Policy Resolutions, a resolution strongly opposing Stand Your Ground/Shoot First Laws.<sup>xix</sup> The resolution urges state legislatures that have adopted SYG or Shoot First laws to reform or repeal them.<sup>xx</sup>

In May 2013, the **U.S. Commission on Civil Rights** voted 5-3 to launch an investigation into whether Stand Your Ground laws around the country have a racial bias.<sup>xxi</sup> According to one of the Commissioners, this will be a full-blown field investigation of an issue with potential civil rights ramifications.<sup>xxii</sup>

The **NAACP** is advocating for the creation of a set of laws called "Trayvon's Law" which embodies legislative responses that will greatly reduce the likelihood of another tragedy like the Trayvon Martin incident.<sup>xxiii</sup> Trayvon's Law is a set of bills that focus on ending racial profiling, repealing stand your ground type laws, creating law enforcement

accountability through effective police oversight, improving training and best practices for community watch groups, and mandating law enforcement data collection on homicide cases involving people of color.

#### National Urban League

The *National Urban League* applauds all of the efforts cited above that aim to galvanize the forces of research, policy and advocacy in order to expedite the repeal of Stand Your Ground/Shoot First laws in those 22 states that have enacted them and prevent additional states from doing so.

In addition to the joint organizational letter sent to Attorney General Eric Holder cited earlier, the National Urban League has also taken other actions to fight back against "Stand Your Ground" laws and address gun violence.

- The **National Urban League** collaborated with the bipartisan **Mayors Against Illegal Guns** coalition and **VoteVets** in releasing a report on September 16, 2013, showing that 'Stand Your Ground' laws have increased homicides and complicated prosecutions.<sup>xxiv</sup> The study details how these laws have skewed self-defense claims in favor of shooters, sharply increasing successful claims that fatal shootings were justified while boosting the overall homicide rates. The report also provides an analysis of the Stand Your Ground laws in each of the 22 states that have adopted them since Florida passed the nation's first in 2005.
- The **National Urban League** is a partner in the "**Second Chance on Shoot First Campaign**," which is a coalition of civil rights leaders, elected officials, law enforcement professionals and other Americans committed to raising awareness about "Shoot First" and other unsafe gun laws.<sup>xxv</sup> The Campaign is more than a quarter of a million strong and supports responsible gun policies that will make our country safer. The Campaign believes that legislators have a second chance to reform dangerous gun policies in their state and is asking them to take that chance.
- The **National Urban League** is also a member of the **Coalition to Stop Gun Violence**<sup>xxvi</sup> (CSGV) which aims to secure freedom from gun violence through research, strategic engagement and effective policy advocacy. CSGV is comprised of 47 national organizations working to reduce gun violence. Coalition members include religious organizations, child welfare advocates, public health professionals, and social justice organizations.
- On December 3, 2012 and January 25, 2013, **Marc H. Morial, President & CEO of the National Urban League; Rev. Al Sharpton, founder and President of the National Action Network; Benjamin Jealous, President & CEO of the NAACP; and Melanie Campbell, President and CEO of the National Coalition on Black Civic Participation** convened nearly 60 of America's leading civil rights, social justice, business and community leaders in Washington, D.C.

These meetings of African American Leaders were historic and unprecedented and were the first steps in developing a public policy agenda targeting the primary challenges facing African Americans, urban communities and all low-income and working-class Americans.

The ensuing discussions and debates resulted in the identification of five urgent domestic goals for the nation:

1. Achieve Economic Parity for African-Americans
2. Promote Equity in Educational Opportunity
3. Protect and Defend Voting Rights
4. Promote a Healthier Nation by Eliminating Healthcare Disparities
5. Achieve Comprehensive Criminal Justice System Reform

The **African American Leaders Convening** (AALC) has since worked to further expand these goals to include guiding core principles and corresponding legislative policy priorities and other recommendations culminating in a comprehensive agenda document, *"Towards a New Civil Rights Movement for Economic Empowerment and Justice, 21<sup>st</sup> CENTURY AGENDA FOR JOBS AND FREEDOM, African American Leaders Convening, National Policy Priorities,"*<sup>xxvii</sup> that was released on August 23, 2013, at a special summit on the 50<sup>th</sup> Anniversary of the March on Washington.

Included among the AALC agenda's legislative priorities and recommendations pertaining to criminal justice reform and safe communities is the call to pass the **"End Racial Profiling Act."**<sup>xxviii</sup> Racial profiling continues to be a significant issue for millions of Americans who are subject to profiling based on their race, ethnicity, religion, or national origin. The AALC agenda also calls upon the **Department of Justice** to issue strengthened guidance to law enforcement on racial profiling and excessive force.<sup>xxix</sup>

### Conclusion

During her powerful address to the National Urban League at our Annual Conference on July 26, 2013, in Philadelphia, PA, Trayvon Martin's mother, Sybrina Fulton issued these haunting words:

***"My message to you is please use my story, please use my tragedy, please use my broken heart to say to yourself, 'We cannot let this happen to anybody else's child.'"***<sup>xxx</sup>

We urge Congress and the nation not to let her down by taking concrete and immediate action to secure the safety of our communities and eradicate and prevent any further enactment of these devastating Stand Your Ground/Shoot First laws!

Thank you for the opportunity to present our views.

*Established in 1910, the National Urban League is the nation's oldest and largest civil rights and direct services organization serving over 2 million people each year in urban communities in 35 states and the District of Columbia.*

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<sup>1</sup>J. Roman, "Stand Your Ground laws and racial bias," MetroTrends blog, Urban Institute, June 5<sup>th</sup>, 2013, available at <http://blog.metrotrends.org/2013/06/stand-ground-laws-racial-bias/>



<sup>ii</sup>C. Cheng and M. Hoekstra, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine," Texas A&M Department of Economics, 29 May 2012, available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf)

<sup>iii</sup>J. Roman, "Stand Your Ground laws and racial bias," MetroTrends blog, Urban Institute, June 5<sup>th</sup>, 2013, available at <http://blog.metrotrends.org/2013/06/stand-ground-laws-racial-bias/>

<sup>iv</sup>Ibid.

<sup>v</sup>Ibid.

<sup>vi</sup>Ibid.

<sup>vii</sup>Ibid.

<sup>viii</sup>Ibid.

<sup>ix</sup>Ibid.

<sup>x</sup>K. Hundley, S.T. Martin, and C. Humburg, "Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied," *Tampa Bay Times*, June 1, 2012, available at <http://www.tampabay.com/news/publicsafety/crime/article1233133.ece>

<sup>xi</sup>Ibid.

<sup>xii</sup>Ibid.

<sup>xiii</sup>Ibid.

<sup>xiv</sup>Ibid.

<sup>xv</sup>E. Finkel, "Testimony challenging the merits of broader self-defense laws heard by ABA task force," *Your ABA*, July 1, 2013, available at [http://www.abajournal.com/magazine/article/aba\\_task\\_force\\_hears\\_testimony\\_challenging\\_the\\_merits\\_of\\_broader\\_self-defen/](http://www.abajournal.com/magazine/article/aba_task_force_hears_testimony_challenging_the_merits_of_broader_self-defen/); see also <http://diverseeducation.com/article/55179/>

<sup>xvi</sup>Ibid.

<sup>xvii</sup>Ibid.

<sup>xviii</sup>NBA NEWS BRIEF, *National Bar Association Issues "Call for Justice," Urges Legislators to Repeal "Stand Your Ground" Laws*, July 29, 2013, available at [http://www.nationalbar.org/sites/default/files/NBA%20News%20Release%20Post%20Conference%20Version\\_0.pdf](http://www.nationalbar.org/sites/default/files/NBA%20News%20Release%20Post%20Conference%20Version_0.pdf)

<sup>xix</sup>The National Black Caucus of State Legislators, "2013 Ratified Policy Resolutions," Ratified December 7, 2012, pp. 60-61, available at <http://www.nbcsl.org/public-policy/resolutions/item/620-2013-ratified-policy-resolutions.html>

<sup>xx</sup>Ibid.

<sup>xxi</sup>A. Terkel, "'Stand Your Ground' Laws To Be Scrutinized For Racial Bias By Civil Rights Commission," *Huff Post POLITICS*, posted 5/31/13, 6:01pm, available at [http://www.huffingtonpost.com/2013/05/31/stand-your-ground-racial-bias\\_n\\_3365893.html](http://www.huffingtonpost.com/2013/05/31/stand-your-ground-racial-bias_n_3365893.html)

<sup>xxii</sup>Ibid.

<sup>xxiii</sup>For a bill summary of Trayvon's Law, see <http://www.naacp.org/pages/trayvons-law-summary>  
<sup>xxiv</sup>National Urban League, *Mayors Against Illegal Guns*, [VoteVets.org](http://VoteVets.org), "SHOOT FIRST, 'Stand Your Ground' Laws and their Effect on Violent Crime and the Criminal Justice System," September 2013. See, [https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/ShootFirst\\_v4.pdf](https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/ShootFirst_v4.pdf)

<sup>xxv</sup>Other Second Chance Coalition partners include: NYC Mayor Michael Bloomberg, NAACP, National Action Network, Color of Change, Lawyers Committee for Civil Rights, and Vote Vets. See <http://secondchancecampaign.org/>

<sup>xxvi</sup>Coalition to Stop Gun Violence, see <http://csgv.org/>

<sup>xxvii</sup>To access the comprehensive Agenda, AALC members and Agenda signatories, go to <http://iamempowered.com/21st-century-agenda-for-jobs-and-freedom>

<sup>xxviii</sup>"Towards a New Civil Rights Movement for Economic Empowerment and Justice, 21st CENTURY AGENDA FOR JOBS AND FREEDOM, African American Leaders Convening, National Policy Priorities," pp. 33-34.

<sup>xxix</sup>Ibid.

<sup>xxx</sup>For press coverage and video of Sybrina Fulton's address at the National Urban League Annual Conference on July 26, 2013, go to: <http://nul.iamempowered.com/content/press-coverage-sybrina-fultons-address-2013-nul-annual-conference>

ROBERT J. SPITZER, PH.D., CHAIR, POLITICAL SCIENCE DEPARTMENT, SUNY  
CORTLAND, NEW YORK, STATEMENT

**PERSPECTIVES ON THE 'STAND YOUR GROUND' MOVEMENT**

**Testimony Submitted to the U.S. Senate Judiciary Committee, Subcommittee on the  
Constitution, Civil Rights and Human Rights  
Hearing on "Stand Your Ground" Laws: Civil Rights and Public Safety  
Implications of the Expanded Use of Deadly Force"  
September 17, 2013**

Robert J. Spitzer, Ph.D.<sup>1</sup>

Distinguished Service Professor and Chair, Political Science Department, SUNY Cortland  
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Let me extend my sincerest thanks to the Committee for the opportunity to submit this testimony.

Murder is the worst crime. The taking of another life has been considered among the ultimate and most serious of crimes since ancient times. Among the biblical Ten Commandments, "Thou shalt not kill" is not the only prohibited act on the list, but it is the one that carries societies' strongest opprobrium.<sup>1</sup> In the eighteenth century, the great British jurist William Blackstone referred to "destroying" a life as "the principal crime or public wrong that can be committed against a private subject. . . ."<sup>2</sup> As one modern text notes, "To be free of physical attack is of paramount value to all members of society. The right to life and physical security is the matrix of all the other inalienable rights of a person."<sup>3</sup>

Yet there are exceptions to the prohibition against taking another life. First and foremost, the government retains a monopoly on the use of deadly force. This principle has long been understood to be a cornerstone feature in the development of the modern state.<sup>4</sup> As Max Weber noted, "a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory."<sup>5</sup> A police officer may take a life in the line of duty if the circumstances warrant (a power subject to constraints and checks to prevent abuse), or the state may take the life of a person convicted of a crime sufficiently heinous to warrant the ultimate penalty, based on the state authority that stands behind these acts. In the words of Henry C. Black, this power arises from "the sovereign right of a government to promote order, safety, security, health, morals and general welfare within constitutional limits and is an essential attribute of government."<sup>6</sup>

By the time of Blackstone, self-defense was well-established as a valid defense in law, but it was treated differently than justifiable homicide, which pertained to a killing to advance, or in the name of, government justice (even by private citizens under certain circumstances). Self-defense cases, according to Blackstone, are "excusable, rather than justifiable. . . . This right of natural defence does not imply a right of attacking. . . . They cannot therefore exercise this right of preventive defence but in sudden and violent cases, when certain and immediate suffering would be the consequence of waiting for the assistance of the law. . . . it must appear that the slayer had no other possible (or at least probable) means of escaping from his assailant."<sup>7</sup> One might well ask why a person claiming self-defense would not be treated in the same way as someone committing a justifiable homicide, since the very self-defense claim, if sustained, is predicated on the idea that a crime – perhaps the murder of the survivor – was thwarted or stopped. The key reason, as Blackstone noted, was because "both parties may be, and usually

<sup>1</sup> Robert J. Spitzer is the author of four books on gun policy, including *The Politics of Gun Control* (5<sup>th</sup> ed. 2012). The views expressed here are those of the author.

are, in some fault, and it scarce can be tried who was originally in the wrong.”<sup>8</sup> As another noted, “homicide in self-defense rarely arises without fault on both sides.”<sup>9</sup>

#### The Castle Doctrine Exception

The one circumstance where a person attacked need not abide by the retreat rule was when attacked in his or her dwelling, where “he might defend his castle against felonious attack without retreating from it, since that would be to give up the protection of a ‘castle,’ which the law allows him.”<sup>10</sup> The reference to one’s castle is the medieval equivalent of one’s home today, giving rise to the familiar expression, appearing as early as the 1600s in a British court case, that “a man’s home is his castle.”<sup>11</sup> Contrary to the common contemporary impression, the special status accorded the home in this doctrine did not arise from any belief that a person’s homestead or possessions were of such value that they merited the use of violence to protect them (although such a notion did emerge later), but rather because a person’s home was the ultimate refuge of a person attempting to escape harm or avoid conflict; thus, with a person who has “retreated to the wall” of, in this case, the home, an attack against an aggressor there merited special protection under the self-defense doctrine.<sup>12</sup>

While the British legal tradition played a key role in the development of American law on this and many other subjects, American self-defense law soon diverged in important respects from that of Britain. Values of individualism, the persistent strain of anti-government sentiment, actual and fanciful notions of behavior in America’s unsettled western lands, and the “true man” doctrine all contributed to elevation of the notion that citizens had a right to meet force with force not only in their home, but even in public places – and without the need to retreat (an option viewed by some as cowardly, and therefore incompatible with the behavior of a right-thinking American). Lest the phrase “true man” be misunderstood, it is not a reference to some kind of John Wayne-like heroic figure, but rather to individuals who have not run afoul of the law, or are free from legal fault. The phrase is akin to a similar old fashioned expression, “good men and true,” a phrase from the Middle Ages referring to those eligible to serve on a jury.<sup>13</sup>

In the late nineteenth century, courts in many states issued a series of rulings that projected the Castle Doctrine principle into public places, concluding that the “true man” (what today might be labeled an “honest man” or a “good guy”) had a right to defend himself in public without need to retreat, if he had a right to be where he was.<sup>14</sup> Historian Richard Maxwell Brown referred to this change in American legal doctrine as “a proud new tolerance for killing in situations where it might have been avoided by obeying a legal duty to retreat.” Brown’s verdict about the effect of this change was that it “undoubtedly had an impact on our homicide rate, helping to make it the highest on earth among our peer group of the modern, industrialized nations of the world.”<sup>15</sup>

The many state court rulings<sup>16</sup> beginning in the late 1800s that grappled with applying the stand-your-ground versus safe retreat options for violent interpersonal confrontations outside of the home contributed to several Supreme Court rulings. In *Beard v. U.S.* (1895),<sup>17</sup> the Supreme Court overturned a lower court ruling upholding the conviction of a man, Babe Beard, who killed another by whom he felt threatened while the man was on Beard’s property (though not in his house). In this instance, the high court decision rejected the notion that Beard had a duty to retreat from his own property. In *Allen v. U.S.* (1896),<sup>18</sup> the Supreme Court concluded that a man attacked by another could defend himself lawfully, even to the extent of killing the other person, if he felt in danger of losing his life or suffering serious bodily harm “provided he use all the means in his power otherwise to save his own life or prevent the intended harm, such as retreating as far as he can. . . .”<sup>19</sup> Other cases from the high court around this time seemed to

favor a more expansive view of the self-defense privilege as one that could be invoked when defendants were standing their ground in places other than their homes or property.<sup>20</sup> In 1921, the Supreme Court again took up a self-defense case in *Brown v. U.S.*<sup>21</sup> In a ringing decision written by Oliver Wendell Holmes, the court overturned the conviction of a man who had killed another with whom he had had a longstanding feud. The trial judge had instructed the jury that the man had a duty to retreat before killing his assailant (the incident occurred in a public place), and so convicted him. Appeals courts upheld the verdict.

In his opinion, Justice Holmes noted that “the failure to retreat is a circumstance to be considered with all the others” in order to reach a verdict. But, he continued, “Many respectable writers agree that if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him he has not exceeded the bounds of lawful self-defense.”<sup>22</sup> Unlike the *Beard* case, Brown was not on his own property, said Holmes, but nevertheless was “at a place where he was called to be, in the discharge of his duty.”<sup>23</sup> (Both men were working on the construction site of a federal post office facility.) While Holmes’s decision championing the stand your ground (SYG) principle would seem at odds with much of his civil liberties jurisprudence, it did reflect a clear expression of the “true man” exhibiting masculine bravery by standing his ground in a public place.<sup>24</sup>

Yet this view has not been universally embraced. In fact, state laws did and do continue to be divided on the SYG versus safe retreat views of justifiable self-defense in public places. The Model Penal Code of the American Law Institute emphasizes safe retreat over physical confrontation, although the authors also recognize that more jurisdictions around the country have favored standing one’s ground as opposed to safe retreat.<sup>25</sup> So things stood until 2005. Enter the Hammer

Since the early 1980s, the National Rifle Association (NRA) has devoted much of its political resources to advancing its policy goals in state legislatures. The state legislative strategy fit well with the NRA’s ability to press its agenda most successfully in a low-visibility way in more conservative jurisdictions, as citizens generally pay less attention to their state governments than they do to national politics (which are the focus of most news coverage), or to local politics, where snow removal, garbage pickup, zoning laws, and many other local government responsibilities affect citizens most directly in their daily lives. Under such circumstances, narrow, focused, low visibility interest group pressure can have maximum effect. In addition, the majority of state governments tend to be fairly conservative, since most states represent relatively small numbers of people who, by demography (in particular more rural, more white), are more likely to sympathize with conservative politics.

In 2005, Floridian and former NRA national president, Marion Hammer, spearheaded a new initiative – to expand in Florida state law the right of citizens to use deadly force in circumstances where individuals feeling threatened could “stand their ground” in a public place rather than first seek safe retreat, as Florida law stipulated up to that time. Acting rapidly, and with little public fanfare, the measure won ready enactment through the state Legislature, despite opposition from police and prosecutors.<sup>26</sup> This extension of the Castle Doctrine to public places was, as we have noted, hardly a new idea. But this new initiative did more.

As Hammer and other bill supporters said, this legislation was not proposed in response to any pattern of wrongful convictions based on existing state law. According to one bill co-sponsor, the purpose of the bill was to “curb violent crime and make the citizens of Florida safer.”<sup>27</sup> In an article published shortly after the passage of the Florida law, Hammer wrote: “That’s what this law is all about: restoring your right under the Castle Doctrine and the

Constitution to protect yourself, your family and others. Your home is your castle, and you have a right — as ancient as time itself — to absolute safety in it.”<sup>28</sup> As a factual matter, almost none of those things was true about the new law: it did not “restore” a right, but created a new one for behavior in public places; the right to self-protection in public places already existed under Florida law;<sup>29</sup> and the initial formulation of the Castle doctrine pertained to the home, where Florida law already provided appropriate protection and no need to retreat, not public places — ergo its very name.

Advocates of modern SYG laws emphasize that their purpose is to protect law-abiding citizens’ ability to defend themselves in public places where retreat may be dangerous (especially if an attacker has a gun), that citizens should not have to leave a public place where they have a right to be, and that these laws have been around for a very long time. As the account here demonstrates, the Castle Doctrine is hundreds of years old, and the SYG principle has appeared in American law for over a hundred years. So why the fuss?

Stand Your Ground or Shoot First? The Case of Florida

The answer is found in the added immunities and protections in the Florida and subsequent similar state laws extended to anyone who makes a self-defense claim in a public place. Above and beyond applying the Castle Doctrine self-defense principle to public areas (the wisdom of which is, at the least, debatable), Florida’s 2005 law gives to a person claiming self-defense “an absolute and irrebuttable presumption that an individual who kills or harms another. . . has acted in self-defense and cannot be prosecuted.”<sup>30</sup> Law enforcement must thus presume that an individual making a self-defense claim acted out of reasonable fear, a standard met by nothing more than the individual’s claim to such a fear. In addition to eliminating the requirement that people feeling threatened in public places must first attempt safe retreat, these two provisions profoundly changed the manner in which Florida’s criminal justice system handles such cases. The critical portion of the law from Florida Statutes, Section 776.013(3), says:

A person who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

Note that the standard for establishing a viable self-defense claim is that the person making a self-defense claim after applying violence is the individual’s reasonable belief — not externally examined or verified facts (although such information can be introduced later if it is uncovered). In other words, persons who report feeling threatened by “death or great bodily harm” have met the necessary legal standard — even if they could have safely retreated or called the police.

Coupled with this is the law’s provision of immunity from “criminal prosecution and civil action for the use of such force” (Section 776.032), which extends to immunity from arrest, custodial detention, and the bringing of charges against the person. According to the Association of Prosecuting Attorneys, this blanket immunity “is greater than the legal protections afforded police officers who are involved in a shooting in the line of duty.”<sup>31</sup> Police may not arrest the person in question, according to Section 776.032(2), “unless it determines that there is probable cause that the force that was used was unlawful.” As this has played out in such cases, the police are obliged under the law to ask only three questions: whether the defendant had a right to be where he or she was; whether the person was engaged in lawful activity; and whether the person claimed fear of death or imminent bodily harm.<sup>32</sup>

In practical terms, law enforcement is restricted in its ability to conduct an investigation and gather evidence, because police must accept the individual's assertion (bundled with the immunity protection), without the need for corroboration or any actual evidence of an objective threat, that he or she felt threatened. Before the law change, police were not constrained from investigating acts of violence, much less acts that resulted in a person's death. But since such individuals cannot be detained or arrested under the new law, it is difficult for the police to establish probable cause – the basis for proceeding with an investigation. Law enforcement finds itself left to disprove the person's presumption of "reasonable fear" rather than to establish a case; nor can it turn the matter over to prosecutors, judges, or juries. These constraints "can affect how thoroughly police investigate"<sup>33</sup> self-defense claims. According to Florida lawyers involved in cases after the law took effect, many thought that the SYG principle would have a significant impact on trials, with more defendants bringing in a SYG defense. Yet that seems not to have been a significant trend. What has been a notable change, according to the former president of the Florida Association of Criminal Defense Lawyers, was this: "the real impact has been that it's making filing decisions difficult for prosecutors. It's causing cases not to be filed at all or to be filed with reduced charges."<sup>34</sup> That view is also shared by prosecutors around the state.<sup>35</sup> According to the national Association of Prosecuting Attorneys, the new SYG laws have imposed "a barrier to prosecution of genuine criminals." The organization's vice president, Steven A. Jansen, said that "It's almost like we now have to prove a negative – that a person was not acting in self-defense, often on the basis of only one witness, the shooter."<sup>36</sup>

While the law has an abiding interest in protecting people who legitimately exercise self-protection, the value of protecting human life – traditionally placed on an even higher pedestal – loses its pre-eminent status under the Florida SYG law because the state is impeded in its ability to fully investigate an incident, to the extent that would be otherwise possible, and then turn investigative findings over to prosecutors, who in turn have been less likely to prosecute, or prosecute vigorously.<sup>37</sup>

Many cases in Florida and in other states that have adopted this law have emerged which underscore the fears of critics. But no case garnered more attention in the first eight years after the enactment of the Florida law, nor did more to draw it to the attention of the nation, than the shooting death of a seventeen-year-old African American teenager, Trayvon Martin, by neighborhood watch volunteer George Zimmerman in 2012.

Zimmerman was patrolling a local neighborhood in Sanford, Florida on a rainy night in February 2012 when he saw a tall, African-American male wearing a hooded sweatshirt wandering the neighborhood. When Zimmerman called in the sighting, the dispatcher advised him to remain in his vehicle. Instead, Zimmerman left to follow the person he had seen. Zimmerman was armed with a handgun, which he carried legally (although police authorities urge neighborhood watch volunteers not to carry firearms). Within minutes, the two had some kind of encounter, during which Zimmerman shot and killed Martin with a single bullet to the chest at close range. Martin was unarmed; Zimmerman suffered cuts to his head. Martin had been visiting his father in the neighborhood where he had been seen wandering, and had gone to a local store to purchase a drink and a bag of candy, but had become disoriented in the darkened, unfamiliar neighborhood. Zimmerman was charged with murder, but was found not guilty in a jury trial in July 2013.

As many noted, Zimmerman's lawyer did not expressly invoke Florida's SYG law in his defense, but rather relied on a classic and standard self-defense claim; however, the new Florida state law had a significant effect on the case from start to finish. First, while Zimmerman was

read his Miranda rights and questioned on the night of the shooting, he was not arrested and held, because police are not allowed to do so if there is probable cause that Zimmerman acted in self-defense. Under the law, his claim to such defense, which he made from the start, forestalled that possibility in the absence of substantial contrary evidence (evidence that was not gathered, in part, because of a less-than full-bore investigation). While we do not know whether Zimmerman lied to the police about his self-defense fears, he surely had an abiding self-interest to lie, as would anyone in such a situation.

Second, news reports noted that the initial police investigation was not as thorough as it could have been (neighborhood canvassing, witness interviewing, crime scene preservation were all considered inadequate, for example<sup>38</sup>). While initially attributed to police incompetence or lack of zealousness, it was later attributed, at least in part, to the potency of the self-defense claim as set out in the law, and the attendant reluctance of police to proceed with a full bore investigation under such circumstances. It is also the likely reason the local prosecutor declined to bring any criminal charges against Zimmerman.<sup>39</sup> Charges were eventually brought six weeks after the shooting when the governor named a new prosecutor.

Third, defendants claiming self-defense are entitled to a pre-trial immunity hearing where, if the court finds the person entitled to immunity, no criminal trial occurs. Even though charges of criminality are at stake, at immunity hearings, the legal standard of proof for the defendant is “preponderance of the evidence,” a lower legal standard (it is the one used in civil cases) than the higher standard applicable in criminal cases, “beyond a reasonable doubt.” The person so granted immunity is also entitled to damages, including all fees, expenses, and lost income. In addition, law enforcement are subject to penalties if they do not prevail, in that they can be held liable for damages (stripping them of the immunity normally shielding law enforcement). In other words, law enforcement faces a heavy price for failing to make its case.<sup>40</sup> In Zimmerman’s case, his lawyer decided against seeking a preliminary hearing, instead moving straight to trial to confront the charge of murder or manslaughter. This was seen by legal experts as a shrewd move by Zimmerman’s lawyer, because it avoided exposing their case and strategy to the prosecution, which could then have then adapted its strategy in the criminal trial. Early exposure of the defense’s case would have been moot had the pretrial hearing gone Zimmerman’s way, but the political pressures and national attention focused on this case made the likelihood of the case ending at a pretrial hearing remote indeed.<sup>41</sup>

Fourth, the judge’s instructions to the jury included the statement that if Zimmerman “was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed [it justified].”<sup>42</sup> Lawyer Jonathan Turley, among others, argued that this instruction was not related to SYG, because it reflected the common law tradition that countenances such actions in many states (as discussed earlier). Yet before 2005, as noted, Florida law called for safe retreat in public places. This is clear from the jury instructions read to Florida juries in such cases before the 2005 law change, which included asking whether the defendant “used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force. The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force.”<sup>43</sup> When that wording was dropped in 2005, it resulted in an important added benefit to Zimmerman’s case.

Fifth, Florida’s law protecting individuals making self-defense claims from civil suits makes such an action by Trayvon Martin’s family highly unlikely. Zimmerman can still claim

immunity to protect himself from civil action; if a civil suit proceeds, the plaintiff (i.e. the Martin family in this case) must pay the defendant's costs if the plaintiff loses. As one legal expert concluded, "If there is a civil suit filed, it will be dismissed, and future ones will be barred."<sup>44</sup>

Sixth, when a Florida-style SYG law is combined with citizens carrying concealed handguns, the circumstances become even more complicated, because in an altercation, it becomes more likely that the opponent may also be carrying a gun, and if the survivor believes that the opponent is reaching for a gun – or reaching for that of the survivor – that provides the basis for the perceived fear that the survivor's life was in danger. As one analyst noted, "Since your fear needs only be reasonable, not correct, a mistaken but reasonable fear that the other person is reaching for a gun legally justifies killing an unarmed person."<sup>45</sup> This was just the set of events described by George Zimmerman. In Florida, at least, the Zimmerman case is not unique. "In case after case" in the first six years after the law's enactment, "Floridians who shot and killed unarmed opponents have not been prosecuted."<sup>46</sup>

#### The Consequences of Stand Your Ground

The widely followed Zimmerman case illustrates some of the nuances in the Florida law, and similar laws in other states. But it is only one case. How has it played out in Florida?

A Florida newspaper, the *Tampa Bay Times*, conducted an extensive and intensive analysis of self-defense claims in the state since the enactment of the 2005 law, identifying almost 200 cases involving self-defense claims. Their detailed investigation drew on many sources, including news reports, police reports, court records, and numerous interviews with prosecutors and lawyers. By examining the facts of each case, they were able to make substantive judgments about the circumstances of each. In summary, they found that SYG claims were successful 68% of the time. Of those, 35% were not charged; 23% won immunity at an immunity hearing; and 10% were acquitted by juries. For those found guilty, half accepted a plea bargain, and the other half were convicted by a jury. Those making such claims were more likely to be successful if the victim was African American (73%) than if the victim was white (59%), although in follow-up investigation, the *Times* reported that they found "no obvious bias" in the treatment of African Americans versus whites.<sup>47</sup> Two-thirds of the defendants used guns.

Beyond these numbers, the *Times* found that the law was administered in widely varying ways across the state, such that circumstances where persons were found not guilty in some jurisdictions were convicted in other cases involving virtually identical circumstances. According to the paper, which called these outcome disparities "shocking," defendants who have benefited the most from the SYG law have been "those with records of crime and violence": almost 60% of those claiming self-defense when a death resulted had been arrested at least once before; about a third had been accused of violent crimes or drug offenses in the past; and over a third had threatened others with a gun in the past or had been found to carry guns illegally. In "dozens" of cases, both the defendant and the victim had criminal records. In the prosecution of these cases, the results varied widely from county to county as to whether they resulted in charges, trials, convictions, or acquittals. Defendants with prior criminal records were less likely to have their self-defense claims upheld (59% acquitted for those with at least one arrest, and 45% acquitted for those with three or more prior arrests).<sup>48</sup>

What about the larger question of the effects of recent SYG laws, and gun carrying by civilians, across the country? Several studies have sought to shed light on this question.

A study of gun carrying in Philadelphia from 2003 to 2006 set out to examine the connection between being hurt by gunfire in an assault and individuals' possession of a gun at the time of such an injury. According to the results of this case-control study of 1361 gun



assaults, after controlling for confounding factors, people in possession of a gun were 4.46 times more likely to be shot in an assault than those who were attacked while unarmed. Individuals were 4.23 times more likely to be shot and killed if they were armed than if not. And in instances where the armed person had at least some chance to offer resistance, those individuals were 5.45 times more likely to be shot. The researchers offered several possible reasons for these significantly elevated rates of gun injury and death for those who were themselves armed. First, the victims may have felt themselves unjustifiably empowered because they were armed, causing them to react or respond where they might not have had they not been armed. Second, armed individuals may have been more likely to enter dangerous situations or environments that they would have otherwise avoided had they not been armed. Third, some armed individuals may have had their guns stripped from them, and then turned against them. Fourth, many of the shootings studied involved participants who had had a prior dispute, so there was both an escalation of arms, and a greater proclivity to use them. Fifth, in the smaller number of incidents when the perpetrator was not armed but the victim was, the element of surprise may have worked to the disadvantage of the armed person. And sixth, some shootings occurred when the armed victims had no opportunity to effectively use their firearm, when events happened too suddenly, when they were fired at from a long distance, or even when there were physical barriers between the shooter and the armed victim (e.g. when a bullet passed through a wall). The authors concluded that while successful defensive gun uses do occur annually, “guns did not protect those who possessed them from being shot in an assault” and “the probability of success may be low for civilian gun users in urban areas.”<sup>49</sup>

While this study addressed, and was critical of the gun carry practices facilitated by Castle doctrine laws, it did not specifically examine the impact of the law changes that occurred in the last decade. But other studies have.

An analysis of killings dubbed “justifiable homicides” by the *Wall Street Journal* in 2012 found that, from 2000-2010, they nearly doubled. While the nation experienced an average of 16,000 total killings annually during this period (a majority of them from guns), 2285 of those were considered justifiable. On a per capita basis, the annual overall homicide rate declined during this period, whereas justifiable homicides increased 85 percent, from 176 cases in 2000 to 326 cases in 2010. The increase could be the result of more citizens killing each other given the new laws, or they could simply be killings that would have occurred anyway, but that are now labeled “justifiable” because of the new laws (or a combination of the two) – except that proposition is contradicted by the slight decline in overall killings over this period. Among the states that enacted Florida-style SYG laws, justifiable homicides doubled in Texas and Georgia, and tripled in Florida (from an average of 12 per year in the five years before the new law to 33 per year in the five succeeding years). Florida and Texas alone account for a quarter of all justifiable homicides during this ten year period. On the other hand, in five other states that enacted the new SYG laws during this period (Alabama, Kansas, Mississippi, Montana, and West Virginia), justifiable homicide rates did not appreciably change. In Michigan, the rate actually declined. As reported by the *Journal*, homicides are considered justifiable if prosecutors decline to press charges, or if a judge or jury concludes that the use of lethal force was warranted as an act of self-defense. The *Journal* also reported that justifiable homicide cases differed from murders in that, in the case of the former, the victim and killer were strangers in about 60% of the cases, whereas in non-justifiable cases, the victim and killer knew each other in more than 75% of the incidents. Firearms were used in over 80% of the justifiable killings, compared with 65% of unjustifiable killings.<sup>50</sup>

Two researchers from Texas A&M University drew on FBI Uniform Crime Report data from the U.S. Department of Justice to examine the effects of newly enacted SYG laws. Their analysis of the period from 2000 to 2010 found no evidence that such laws deterred crimes, including burglary, robbery, or aggravated assault. They did, however, find an increase in the homicide rate of about 8% (about 600 additional homicides per year) in states with the new SYG laws, and an approximate increase in justifiable homicides of between 17-50%, leading them to conclude that “a primary consequence of castle doctrine laws [when applied to public places] is to increase homicide by a statistically and economically significant”<sup>51</sup> rate. At the same time, they found little evidence that criminals were more likely to carry guns than before the enactment of these laws. In all, they found that SYG laws reduce the costs associated with the use of lethal force, thereby encouraging more of it.

A 2012 study from the National Bureau of Economic Research applied a variety of statistical techniques to examine the effect of SYG laws on homicides and gunshot injuries. Drawing on data from the U.S. Vital Statistics, that study found that the enactment of such laws (looking at those states that enacted more expansive, Florida-style laws, compared with the rest of the country) was associated with a significant increase in homicides, averaging from 336 to 396 additional white male deaths per year, or a 6.8% increase in the homicide rate (a figure very close to that found in the Texas A&M study, even though it drew on different data). Statistically speaking, that increase occurs almost entirely among white males (the researchers found no statistical effect on white females, and virtually none among African Americans, either male or female). The authors speculate that the racial disparity may be accounted for by the fact that the overwhelming majority of those with concealed gun carry permits are white males, who are also most likely to own guns, and to have purchased more guns in recent years as news of liberalized carry laws and the enactment of SYG laws has spread. The researchers conclude that there is “no evidence” that SYG laws “result in a reduced number of deaths among citizens in the states that have introduced such laws. On the contrary, these results indicate that the number of firearm related homicides. . . increase significantly as a result of these laws.”<sup>52</sup> The study also examined the connection between SYG laws and non-fatal firearm injuries, finding that SYG states had higher emergency room admits and hospitalizations for gunshot wounds than non-SYG states.

The intersection of race and SYG laws was examined in a report by the Urban Institute. Drawing on data from the Supplemental Homicide Reports compiled by the FBI, researcher John Roman found significant racial differences in the adjudication of SYG laws. Looking at data on all homicides and all gun homicides from 2005-2010, Roman found that, when the killer and victim (for all homicides) were both white in non-SYG states, the killing was ruled justified in about 1.7% of instances; when the shooter was African American and the victim white, the justifiable rate was about 1.1%; when the shooter and victim were both African American, the justifiable rate was about 2.1%. When the killer was white and the victim black, however, the justifiable rate was 9.5%. In SYG states, the justifiable rates for black on black, black on white, and white on white killings were within one to two percent of each other when compared with non-SYG states. But when the killer was white and the victim black, the rate rose to almost 17%.

These differences are more pronounced for gun homicides. Rulings of justifiability for black on black and black on white cases are within 1-2% of each other in non-SYG and SYG states. When whites shoot whites in non-SYG states, the figure is nearly 8%, but 15% in SYG states. When the shooter is white and the victim black, the justifiable rate is over 29% in non-SYG states, and almost 36% in SYG states. It may simply be that more acts of homicide considered justifiable involve African American victims. Still, the correlations raise a legitimate

question regarding the impact of race on the administration and prosecution of self-defense claims in the criminal justice system.

#### Conclusion

None of these studies closes the book on the consequences of SYG laws, but they all point to the same conclusions. First, there was and is no identifiable benefit to be had by their enactment, or the gun carrying that has typically accompanied it.<sup>53</sup> There is no evidence that they reduce or suppress crime, or generate any societal benefit, beyond perhaps a feeling among gun carriers that they are acting justly or beneficially when potential self-defense situations arise. Second, there is considerable evidence that these laws have generated an increase in homicides – more killings that would not otherwise have occurred absent the change in law. Third, self-defense killings are anomalous as compared to all killings in that they are different as to their frequency – that is, they have shown an increase nationwide and in states with greater numbers of such killings (notably Florida and Texas) – whereas the overall murder rate has undergone a slight decline over the same period. Fourth, they are also different as to their nature, as self-defense killings usually involved strangers, whereas murders usually involved people known to the killers. Firearms were more likely to be used, and the consequences for the manner in which self-defense cases were handled through the criminal justice system seem to be worrisomely adverse for African Americans as compared with whites. As the case analyses published by the *Tampa Bay Times* indicate, at least in Florida, those with a past of criminality and violence have benefited significantly from the SYG law – an outcome sharply at odds with the “true man” or (to use a more contemporary term) “good guy” mythology that is often extolled as a justification for such laws.

#### ENDNOTES

<sup>1</sup> The legal scholar H.L.A. Hart referred specifically to “thou shalt not kill” as “the most characteristic provision of law and morals.” *The Concept of Law* (New York: Oxford University Press, 1961), 190.

<sup>2</sup> William C. Sprague, *Abridgement of Blackstone's Commentaries* (Detroit, MI: Sprague School of Law, 1899), 480.

<sup>3</sup> Donald L. Carper, et al., *Understanding the Law* (Minneapolis, MN: West Publishing Co., 1995), 237.

<sup>4</sup> See for example Thomas Hobbes, *Leviathan* (New York: Macmillan, 1962). As Hobbes notes, governments are formed to bring order from the chaos of the state of nature. When people form or join a society, they relinquish some rights in order to receive the benefits of an ordered society where fundamental rights, including that of life, can be protected. Thus, “when a man hath . . . granted away his right [to the “freedom” of the state of nature]; then he is said to be OBLIGED, or BOUND, not to hinder those, to whom such right is granted. . . . from the benefit of it. . . .” (104)

<sup>5</sup> H.H. Gerth and C. Wright Mills, eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946). 78. Italics in original.

<sup>6</sup> Henry C. Black, *Black's Law Dictionary* (St. Paul, MN: West Publishing Co., 1991), 801.

<sup>7</sup> Sprague, *Abridgement of Blackstone's Commentaries*, 472-73.

<sup>8</sup> Quoted in Garrett Epps, “Any Which Way But Loose: Interpretive Strategies and Attitudes Toward Violence in The Evolution of the Anglo-American ‘Retreat Rule,’” *Law and Contemporary Problems* 55(Winter 1992): 309.

<sup>9</sup> Epps, “Any Which Way But Loose,” 309.

<sup>10</sup> Joseph H. Beale, Jr., “Retreat from a Murderous Assault,” *Harvard Law Review* 16(June 1903): 574-75; Catherine L. Carpenter, “Of the Enemy Within, the Castle Doctrine, and Self-Defense,” *Marquette Law Review* 86(Spring 2003): 655-57.

<sup>11</sup> Quoted in Elizabeth B. Megale, “Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to ‘Get Away with Murder,’” *American Journal of Trial Advocacy* 34(Summer 2010): 112.

<sup>12</sup> Christine Catalfamo, “Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century,” *Rutgers Journal of Law and Public Policy* 4(Fall 2007): 506-7.

<sup>13</sup> Epps, “Any Which Way But Loose,” 313.

- <sup>14</sup> Jeannie Suk, "The True Woman: Scenes from the Law of Self-Defense," *Harvard Journal of Law and Gender* 31(Summer 2008): 239. Key early cases that upheld a stand-your-ground defense were *Erwin v. State*, 29 Ohio St. 186 (1876) and *Runyan v. State*, 57 Ind. 80 (1877).
- <sup>15</sup> Richard Maxwell Brown, *No Duty to Retreat* (New York: Oxford University Press, 1994), 5.
- <sup>16</sup> State rulings are found in Beale, "Retreat from a Murderous Assault," and Suk, "The True Woman."
- <sup>17</sup> 158 U.S. 550 (1895).
- <sup>18</sup> 164 U.S. 492 (1896).
- <sup>19</sup> 164 U.S. 492 at 497.
- <sup>20</sup> *Allen v. U.S.*, 164 U.S. 492 (1896); *Alberty v. U.S.*, 162 U.S. 499 (1896); *Rowe v. U.S.*, 164 U.S. 546 (1896).
- <sup>21</sup> 256 U.S. 335 (1921).
- <sup>22</sup> 256 U.S. 335 at 343.
- <sup>23</sup> 256 U.S. 335 at 344.
- <sup>24</sup> Brown, *No Duty to Retreat*, 17.
- <sup>25</sup> Epps, "Any Which Way But Loose," 305.
- <sup>26</sup> Zachary L. Weaver, "Florida's 'Stand Your Ground' Law: The Actual Effects and the Need for Clarification," *University of Miami Law Review* 63(October 2008): 401-3.
- <sup>27</sup> Abby Goodnough, "Florida Expands Right to Use Deadly Force in Self-Defense," *New York Times*, April 27, 2005, A18.
- <sup>28</sup> Marion P. Hammer, "At Last, a Balance Shifts Away from Criminals," *Atlanta Journal-Constitution*, May 2, 2005, 11A.
- <sup>29</sup> Goodnough, "Florida Expands Right to Use Deadly Force in Self-Defense."
- <sup>30</sup> Megale, "Deadly Combinations," 107.
- <sup>31</sup> Quoted in "Shoot First Laws Policy Summary," *Law Center to Prevent Gun Violence*, July 14, 2013, at <http://smartgunlaws.org/shoot-first-laws-policy-summary/>.
- <sup>32</sup> Kris Hundley et al., "Florida 'Stand Your Ground' Law Yields Some Shocking Outcomes Depending on How the Law is Applied," *Tampa Bay Times*, June 1, 2012, at <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>
- <sup>33</sup> Hundley, "Florida 'Stand-Your-Ground' Law Yields Some Shocking Outcomes."
- <sup>34</sup> Quoted in Weaver, "Florida's 'Stand Your Ground' Law," 406-7.
- <sup>35</sup> Weaver, "Florida's 'Stand Your Ground' Law," 407-9.
- <sup>36</sup> Marc Fisher and Dan Eggen, "Stand Your Ground Laws Coincide With Jump in Justifiable-Homicide Cases," *Washington Post*, April 7, 2012, at [http://articles.washingtonpost.com/2012-04-07/national/35452643\\_1\\_new-law-american-law-justice-system](http://articles.washingtonpost.com/2012-04-07/national/35452643_1_new-law-american-law-justice-system)
- <sup>37</sup> Daniel Michael, "Florida's Protection of Persons Bill," *Harvard Journal on Legislation* 43(Winter 2006): 199-212; Weaver, "Florida's 'Stand Your Ground' Law," 395-429; Megale, "Deadly Combinations," 105-34.
- <sup>38</sup> Dan Barry, et al., "In the Eye of a Firestorm," *New York Times*, April 2, 2012, A1.
- <sup>39</sup> Lizette Alvarez, "Self-Defense, Hard to Topple," *New York Times*, July 15, 2013, A1.
- <sup>40</sup> Judge H. Lee Sarokin, "What Are the Real Issues Now that George Zimmerman Has Been Arrested and Charged?" *Huffington Post*, April 12, 2012, at [http://www.huffingtonpost.com/judge-h-lec-sarokin/what-are-the-real-issues- b\\_1421817.html](http://www.huffingtonpost.com/judge-h-lec-sarokin/what-are-the-real-issues- b_1421817.html)
- <sup>41</sup> Alvarez, "Self-Defense Hard to Topple"; Lizette Alvarez, "Zimmerman Forgoes Pretrial Hearing, Taking Issue of Immunity to a Jury," *New York Times*, May 1, 2013, A12.
- <sup>42</sup> Quoted in Jonathan Turley, "The Stand Your Ground Law and the Zimmerman Trial," July 20, 2013, at <http://jonathanturley.org/2013/07/20/the-stand-your-ground-law-and-the-zimmerman-trial/>
- <sup>43</sup> Quoted in Timothy Johnson, "Media Neglect That 'Stand Your Ground' Is Centerpiece of Florida's Self-Defense Law," *Media Matters*, July 16, 2013, at <http://mediamatters.org/research/2013/07/16/media-neglect-that-stand-your-ground-is-centerp/194916>
- <sup>44</sup> Quoted in Matt Gertz, "Stand Your Ground and the Zimmerman Defense," *Media Matters*, July 15, 2013, at <http://mediamatters.org/blog/2013/07/15/stand-your-ground-and-the-zimmerman-defense/194870>
- <sup>45</sup> Joseph Kennedy, "Why It Was Too Easy for George Zimmerman to Get Off for Self-Defense," *Slate.com*, July 16, 2013, at [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2013/07/george\\_zimmerman\\_and\\_self\\_defense\\_why\\_it\\_was\\_too\\_easy\\_for\\_him\\_to\\_get\\_off.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/george_zimmerman_and_self_defense_why_it_was_too_easy_for_him_to_get_off.html)
- <sup>46</sup> Emily Bazelon, "Why George Zimmerman, Trayvon Martin's Killer, Hasn't Been Prosecuted," *Slate.com*, March 19, 2012, at

[http://www.slate.com/articles/news\\_and\\_politics/crime/2012/03/why\\_george\\_zimmerman\\_trayvon\\_martin\\_s\\_killer\\_hasn\\_t\\_been\\_prosecuted\\_.html](http://www.slate.com/articles/news_and_politics/crime/2012/03/why_george_zimmerman_trayvon_martin_s_killer_hasn_t_been_prosecuted_.html)

<sup>47</sup> Susan Taylor Martin, "Race Plays Complex Role in Florida's 'Stand Your Ground' Law," *Tampa Bay Times*, June 2, 2012, at <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152>

<sup>48</sup> Kameel Stanley et al., "Many Killers Who Go Free with 'Stand Your Ground' Law Have History of Violence," *Tampa Bay Times*, July 21, 2012, at <http://www.tampabay.com/news/courts/criminal/many-killers-who-go-free-with-florida-stand-your-ground-law-have-history/1241378>

<sup>49</sup> Charles C. Branas et al., "Investigating the Link Between Gun Possession and Gun Assault," *American Journal of Public Health* (November 2009): 2034-40. Quotes from 2034.

<sup>50</sup> Joe Palazzolo and Rob Barry, "More Killings Called Self-Defense," *Wall Street Journal*, March 31, 2012. The paper's analysis was based on data obtained from the FBI and Florida.

<sup>51</sup> Cheng Cheng and Mark Hoekstra, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?" NBER Working Paper No. w18134, June 2012. Available at SSRN: <http://ssrn.com/abstract=2079878>, 26.

<sup>52</sup> Chandler McCellan and Erdal Tekin, "Stand Your Ground Laws, Homicides, and Injuries," National Bureau of Economic Research, Working Paper 18187, <http://www.nber.org/papers/w18187>, June 2012, 23-24.

<sup>53</sup> One author who has persistently extolled the value of civilian gun carrying has been John Lott. In various articles, and in his book *More Guns, Less Crime* 3<sup>rd</sup> ed. (Chicago: University of Chicago Press, 2010), he argues that gun carrying has reduced murder rates and violent crimes from 1977-2006. But there are numerous problems with Lott's claims and evidence. First, his period of study in the third edition of this book (published in 2010) ends the year Florida enacted its stand your ground law. Second, others who have analyzed his data have concluded that it not only does not support his more-guns-less-crime thesis, but in fact reveals opposite trends. According to researchers Aneja, Donohue, and Zhang, examining the impact of right to carry laws on crime in seven categories, of 56 statistical estimates, 23 were negative – that is, in the direction of decreasing crime – but none was statistically significant at the .01 level, and only one was significant at the .05 level. On the other hand, 33 were positive – that is, in the direction of increasing crime associated with the enactment of right to carry laws, with three significant at the .01 level and eight significant at the .05 level. See Abhay Aneja, John J. Donohue III, and Alexandria Zhang, "The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy," January 2013; NBER Working Paper No. w18294. Available at SSRN: <http://ssrn.com/abstract=2131606>.

Aside from these problems, Lott has engaged in a series of problematic behaviors, including making up a fictional person who extolled his work on the internet, referring to study findings that he could not produce, and other problems. See Robert J. Spitzer, *The Politics of Gun Control*, 5<sup>th</sup> ed. (Boulder, CO: Paradigm Publishers, 2012), 69-73.

## SARAH CLEMENTS, STUDENT, NEWTOWN, CONNECTICUT, STATEMENT

To The Honorable Senator Richard Durbin and the Senate Judiciary Committee:

I would like to state my testimony from perhaps a different point of view than you have seen or heard before. My name is Sarah Clements and I am a high school student, 17 years old, from Newtown, CT. In December, a gunman opened fire in my former elementary school and my mother's place of work. She survived the shooting at Sandy Hook, but we knew many of the twenty-six who did not. Since that day, I have been working with others from my town who want to see and make change and with individuals from around the country to prevent gun violence.

Trayvon Martin was killed the day before I turned seventeen. He himself was seventeen, too. I could not really connect with him on the surface, as I had never experienced the effects of gun violence (yet): I am a white teenage girl and I live in a fairly wealthy neighborhood where the threat of being shot on my way home from the store never even crossed my mind. Yet I was shaken to the core on February 26th, 2012, if only because of the injustice and because he died the day before I turned seventeen; we would have been the same age the next day. I always kept Trayvon and his family in my heart, moving forward and hoping for a fair trial, which of course we did not witness.

But after what happened in my town, after I felt the effects of gun violence on my family and on my neighbors and on Newtown, even though they were different circumstances, I immediately went back to Trayvon's story. I researched Stand Your Ground, finding out that the NRA very quietly implemented the law into 26 states. And reading story after story that looked identical to Trayvon's, I now understood why opponents called it "will to kill."

If I have learned anything in the last nine months, in the beginnings of my journey to help reduce gun violence, it's that the majority of gun violence does not occur in the highly publicized way that Newtown was. It mostly takes place, say, on the corner of the neighborhood between two people. It is senseless violence, and one of the most common steps we have the obligation to take, that will not infringe on *any* responsible gun owners' rights, is to eliminate "will to kill" laws like Stand Your Ground.

And if we have learned anything from Trayvon and his family, it is that our moral obligation to protect children and families from the pain and struggle that lasts a lifetime after these incidents trumps your monetary ties with the NRA and gun manufacturers. I know, as a teenager who has experienced the pain of gun violence and as a student who, even though our differences seemed to outweigh our similarities, saw herself in Trayvon Martin, that the right thing to do is to lead with kindness and morality. You know it is the right thing to do to eliminate Stand Your Ground. So please step up and show my generation, the one most disproportionately affected by gun violence and by Stand Your Ground, that you care about our future and our safety.

Thank you, and I look forward to the day when Stand Your Ground and other "will to kill" laws are eliminated.

Sincerely,

Sarah Clements

HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS, STATEMENT

**Statement of Senator John Cornyn**

*"Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force"*

- The Tenth Amendment to the United States Constitution ensures that each State has the sovereign right to pass laws to protect the safety and welfare of their citizens.
- In the words of James Madison in Federalist No. 45: "Those powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."
- So I am troubled that this Committee, a part of the federal government, is here investigating the choice of State governments to design constitutional, popular, and effective self-defense laws.
- U.S. Representative Elijah Cummings, a Democrat from Maryland, recently said of any changes to "Stand Your Ground" laws: "I don't think it can be done from here. . .It's something that's going to have to be done by the States."
- I agree with Representative Cummings, and I believe that self-defense rights and policies are a decision reserved to the states and the people by our Constitution.



- And the States have spoken very clearly on this issue: they believe that their citizens should have the right to reasonably defend themselves from violent criminals.
- By my count, at least 40 states have adopted either a “Castle Doctrine” or “Stand Your Ground” law, allowing their citizens to better protect themselves from criminals.
- Support for these laws has been broad and bipartisan across state governments. In fact, as an Illinois state senator, President Obama not only supported, but cosponsored, an expansion of Illinois’ state “Stand Your Ground law.”
- In 2007, my home State of Texas enacted a “Stand Your Ground” law, which says that a person is not a criminal if they reasonably use deadly force to defend themselves or their family from a violent attack.
- In other words, in Texas, a law-abiding citizen has no duty to retreat from a violent criminal who is attempting to kill them.
- This is a common-sense formulation of the fundamental right to self-defense protected by the Second Amendment.

- I will always support and stand up for the efforts of Texas to protect the Second Amendment.
- And since Texas passed its “Stand Your Ground” law in 2007, the violent crime rate in our State has decreased by more than 20%, and the murder rate has decreased by more than 25%.
- We have seen similar drops in violent crime rates in other states following their passage of such laws.
- It is therefore no surprise that common-sense self-defense laws are so popular among the States—they protect Second Amendment rights and help reduce violent crime.
- And the American people agree. A recent Quinnipiac poll found that 53 percent of Americans support “Stand Your Ground” laws, with only 40% opposed.
- So the message is clear: the Second Amendment right to self-defense is popular, and the American people do not want Washington, D.C. to infringe upon the rights of the States to protect their citizens.
- I come from a State that has a proud history of standing its ground to protect the rights and safety of its people.

- During a 13-day siege in 1836, the defenders of the Alamo stood their ground and defended the citizens of Texas against an attempt to violate their rights and liberties.
- And it is from this tradition that I request that this committee take no further action to investigate or restrict the right of the States to pass self-defense laws that are constitutional, popular, and effective.
- Instead of spending our time on a wild-goose chase investigating laws that we have no power to change, we should be working together to reform our mental health and criminal justice systems to ensure that violent criminals and deranged madmen do not obtain weapons.
- However, given this administration's troubling record of interfering with legitimate state laws and failing to prosecute criminals who illegally obtain weapons, I am not confident.
- I look forward to hearing the testimony today, but hope that this Committee will think long and hard before attempting any action that would infringe upon the rights of the States and the American people to defend themselves and their families.

THE SOCIETY FOR THE PSYCHOLOGICAL STUDY OF SOCIAL ISSUES (SPSSI),  
WASHINGTON, DC, STATEMENT

**STAND YOUR GROUND LAWS AND PSYCHOLOGY**

Forty six states have adopted some form of the *castle doctrine*, which allows individuals to use deadly force to defend themselves in dangerous situations in their homes. Twenty-two states extend this right to use deadly force in self-defense to public places. These laws, called Stand Your Ground (SYG) laws, have reduced the legal risk of using deadly force in any situation that might be construed as presenting a threat of physical harm. The discipline of psychology has much to contribute to the consideration of SYG laws. The following sections, with select annotated references, **outline the psychological implications of SYG laws on individuals, communities, and society at large.**

***SYG Laws and Racial Bias***

African Americans are commonly stereotyped as "criminal," "aggressive," or "thug." It is important to note that most people stereotype, and most are not aware of it. Recent research has focused on how stereotypes can be activated automatically and unconsciously, meaning mental associations and attitudes can be sparked simply by encountering or even thinking about someone who belongs to the stereotyped group. Thus, seeing an African American face can automatically elicit negative thoughts and feelings **without intent or awareness.**

Further, the **perceptual link between African Americans and crime is bidirectional.** That is, seeing African Americans often leads to thoughts of crime, and envisioning "crime" leads many people to think of African Americans. As a result, African Americans are disproportionately represented in considerations of crime, threat, and danger.

We see the results of this stereotyping in the use of shooting simulators, in which **African Americans are disproportionately targeted.** This is referred to as "shooter bias." On average, participants in these simulated shooting tasks, including police officers, are faster to shoot an armed African American target than an armed European American target, slower to decide not to shoot an unarmed African American target, and more likely to mistakenly shoot an unarmed African American target. Trained police officers are less likely than untrained civilians to exhibit the tendency to wrongfully shoot unarmed African Americans in these simulations, but most people, trained or not, exhibit some shooter bias. As SYG laws legitimize real-world use of deadly force, particularly by people who are not trained law enforcement professionals, stereotyping leads to increased risk of violence against African Americans.

Moreover, **juries interpret Stand Your Ground laws differently for people of varying ethnicities.** Data indicate that juries in states with SYG laws are more likely than those in non-SYG states to rule White-on-Black homicide as justifiable, with no discernable difference in Black-on-White homicides. Between 2005-2010, 16.9% of White-on-Black homicides were ruled justifiable in SYG states, as compared to 9.5% in non-SYG states; in the same time period, 1.4% of Black-on-White homicides were ruled justifiable in SYG states, as compared to 1.1% in non-SYG states (see Roman, 2013, below for more details).

**Research Highlights:**

Correll, J., Park, B., Judd, C. M., & Wittenbrink, B. (2004). The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals. *Journal of Personality and Social Psychology*, 88, 1316-1329.

This seminal study used a computer-based simulation to examine the effect of ethnicity on shoot/don't shoot decisions. Participants were told to "shoot" armed targets and to "not shoot" unarmed targets. They tended to make the correct decision to shoot armed targets more quickly when the targets were African American, and tended to "not shoot" unarmed targets more quickly when they were European American. This effect was magnified among those who subscribed to the cultural stereotype of African Americans as dangerous.

Eberhardt, J. L., Goff, P. A., Purdie, V. J., & Davies, P. G. (2009). Seeing Black: Race, crime, and visual processing. *Journal of Personality and Social Psychology, 87*, 876.

The authors investigated the influence of stereotypes on visual processing. They found that seeing African American faces increased participants' ability to detect degraded images of crime-related objects (such as guns), and that making participants think about abstract concepts like "crime" increased the extent to which their attention was captured by African American faces.

Roman, J. K. (2014). Race, justifiable homicide, and Stand Your Ground laws: Analysis of FBI supplementary homicide report data. Urban Institute. Retrieved August 20, 2013 from <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>

This research uses FBI data to investigate whether rates of justifiable homicide verdicts differ by the race of the victim and offender, especially focusing on SYG laws. The authors find substantial evidence of racial disparities in justifiable homicide determinations, especially in states with SYG laws.

#### SYG and Social Influences

In addition to personal biases, social factors can influence potentially dangerous scenarios and increase the peril posed by SYG laws. A group that is perceived as threatening is more likely to be stereotyped. **Stand Your Ground laws, with their tacit endorsement of violence, may increase the acceptability and expectation of violent interpersonal conflict**, particularly against stereotyped groups. Moreover, some recent research suggests that individuals' "implicit normative evaluations" (i.e., what they unconsciously believe other people feel, which may be different from what they feel themselves) can predict "shooter bias," as described above.

#### Research Highlights:

Yoshida, E., Peach, J. M., Zanna, M. P., & Spencer, S. J. (2012). Not all automatic associations are created equal: How implicit normative evaluations are distinct from implicit attitudes and uniquely predict meaningful behavior. *Journal of Experimental Social Psychology, 48*, 694-706.

This research demonstrates that those who perceive more negative social norms toward African Americans display more racial bias on the "shooter task."

Stephan, W. G., & Stephan, C. W. (2000). An integrated threat theory of prejudice. In S. Oskamp (Ed.), *Reducing prejudice and discrimination* (pp. 23-46). Hillsdale, NJ: Erlbaum.

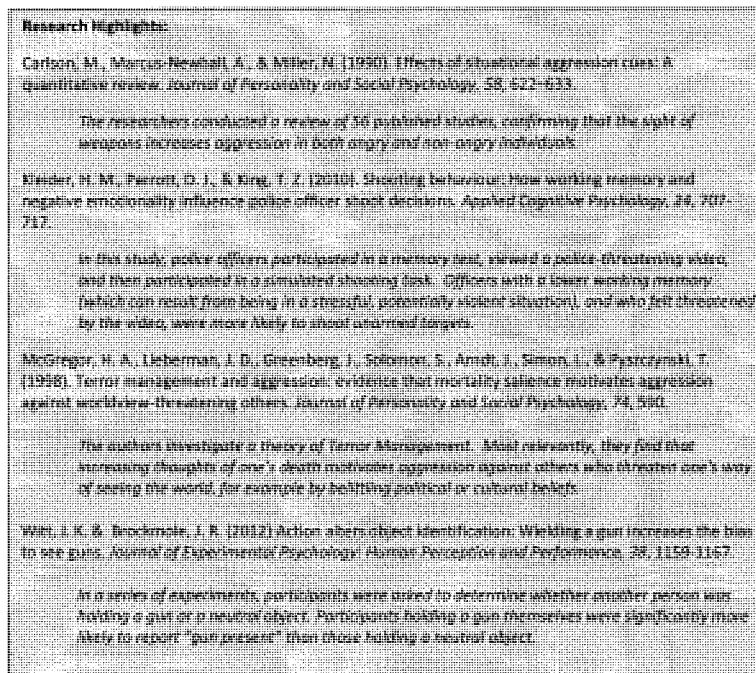
This influential chapter shows that when one's group is threatened by another group's perceived actions, beliefs, or characteristics, that "outgroup" will be disliked and negatively stereotyped.

#### SYG, Threat, and Mortality Salience

SYG laws allow individuals greater latitude to use deadly force with impunity if they feel that they are threatened or in dangerous situations. Research has indicated that **feelings of threat can lead to shooting an unarmed target**. This may be heightened by the presence of a firearm: A significant body of research has highlighted "the weapons effect,"

showing that **the mere presence of a weapon increases the likelihood of aggressive behavior**. Moreover, **holding a gun oneself increases the likelihood of assuming another person is wielding a weapon**, heightening the possibility of a violent response.

Additionally, studies have shown that those who have increased “mortality salience” (thoughts of death) are more likely to act aggressively against others who threaten their worldview. For example, liberals in these conditions display more aggression against conservatives, and vice versa. In the context of SYG laws, if an individual feels threatened and sees someone he feels “doesn’t belong” to the community – which is particularly likely with gated and/or ethnically segregated enclaves – this is likely to promote an aggressive response.



#### SYG and the Consequences of Violence

Stand Your Ground laws reduce the likelihood of punishment for using deadly force. **Mitigating the consequences for lethal force can increase the likelihood that lethal force will be used**. This is consistent with psychological theories about goals. Broadly speaking, if a method of accomplishing a goal is made more prominent and accessible, an individual will pursue that method over alternative, less salient possibilities. **SYG laws legitimize the use of lethal force in a broader set of circumstances, and thereby increase the primacy of using lethal force (e.g., a gun) to achieve one's goals**. In the aggregate, enhanced self-defense laws (i.e., SYG and concealed carry) **do not decrease crime rates**. In

fact, the opposite relationship is observed; in states where such laws have been passed, homicide rates have increased by 8 percent, translating to approximately an additional 600 deaths per year across the states that have SYG laws.

**Research Highlights:**

Cheng, C., & Hockenbury, M. (in press). Does strengthening self-defense law deter crime or escalate violence? Evidence from expanded no-duty doctrine. *Journal of Applied Research*.

Researchers use 2000-2010 data to investigate crime rates in states that transitioned to expanded SYG laws. Their analysis indicates that the laws do not deter burglary, robbery, or aggravated assault. Conversely, they correspond to an 8 percent increase in the number of murders and non-negligent manslaughter. The authors statistically control for other explanations for this increase, and conclude that SYG laws are a causal factor.

Kruglanski, A. W., Shah, J. Y., Fishbach, A., Friedman, R., Chun, W. Y., & Sleeth-Koppler, D. (2002). A theory of goal systems. *Advances in Experimental Social Psychology*, 34, 331-378.

The authors describe their influential theory of goals and means, explaining how people prioritize certain goals over others, and how they choose the means by which they pursue such goals.

### Conclusion

The research outlined above indicates why Stand Your Ground laws are more likely to increase than decrease violent crime, and exacerbate racial discrimination and conflict. Although SYG laws can, on the surface, appear just, factors such as racial bias, normative influences, reduced consequences of violence, and heightened threat perceptions most likely cause them to do more harm than good.

This psychological evidence indicates two primary mechanisms by which SYG laws affect people's decision-making. First, SYG laws reduce the number of psychological barriers preventing someone from using lethal force, and establish violence as an accessible and acceptable option. Second, as research has consistently shown, individuals who feel that they or their community are threatened are more likely to respond in an aggressive manner, particularly if they possess a weapon.

Finally, it is important to note the significance of the broader social context. Both of these mechanisms affect and are affected by (frequently unconscious) racial bias and normative evaluations. That is, African Americans, who often evoke stereotypes such as "criminal" or "dangerous," are more likely to be the victim of SYG-related violence, and less likely to benefit from SYG laws.

*SPSSI Dalmas Taylor Minority Policy Fellow Ryan Lei contributed to this analysis, carried out in part to support the congressional testimony of Dr. Phillip Atiba Goff.*

The Society for the Psychological Study of Social Issues (SPSSI) is an international group of approximately 3000 psychologists, allied scientists, students, and others who share a common interest in research on the psychological aspects of important social issues. The Society seeks to bring theory and practice into focus on human problems of the group, the community, and nations, as well as the increasingly important problems that have no national boundaries. For more information, please contact Policy Director Dr. Gabriel Twose at (202) 675-6956 or [gtwose@spssi.org](mailto:gtwose@spssi.org).

STATES UNITED TO PREVENT GUN VIOLENCE, BARBARA HOHLT, CONTACT, NEW YORK,  
NEW YORK, STATEMENT

Written Testimony Submitted for the Record by

States United to Prevent Gun Violence

For the Hearing before the

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

"Stand Your Ground' Laws: Civil Rights and Public Safety Implications of the  
Expanded Use of Deadly Force"

Tuesday, September 17, 2013

Thank you, Chairman Durbin and Members of the Subcommittee for this opportunity  
to submit written testimony.

The Stand Your Ground law, passed in Florida in 2005 and since then enacted with  
mostly similar provisions in 25<sup>i</sup> additional states, departs from traditional self-  
defense principles. It says that if a person reasonably thinks that he/she is in danger  
of death or great bodily harm he/she has no duty to retreat from a confrontation  
outside the home but can use deadly force to protect himself/herself. Traditional  
self-defense says that a person has a duty to retreat if possible, particularly in public  
places. Our organization holds that this expansion of the legal principle of self-  
defense is not necessary to protect victims and furthermore is likely to lead to more  
gun deaths as citizens with CCW permits are not trained to handle and make  
judgments about confrontations in the way that police officers are. Furthermore, the  
standards for issuing CCW permits are very lax in many states as is training for CCW  
permit holders. And, in some states the Stand Your Ground laws expand the rights to  
use deadly force beyond just protecting a person to protecting property. The  
language in some laws also varies in terms of whether a person is given a  
presumption of reasonableness in his/her decision to use deadly force.

Many in the legal community have been concerned about these Stand Your Ground  
laws as well. The Association of Prosecuting Attorneys has issued a statement of  
principles on such laws, which they call expanded Castle Doctrine laws as follows:  
"Expansions to the Castle Doctrine negatively affect public health and the  
community's sense of safety by undermining prosecutorial and law enforcement  
efforts to keep communities safe as a result of expanding the realm in which violent  
acts can be committed with the justification of self-defense or defense of property."<sup>ii</sup>

States United holds that there is now more and more evidence that these laws often  
turn confrontations and altercations into homicides. There has been good  
investigative journalism on this issue including that by the Tampa Bay Times. It has



compiled a list of 200 fatal and non-fatal cases and analyzed circumstances and results. One article states:

"People often go free under "stand your ground" in cases that seem to make a mockery of what lawmakers intended. One man killed two unarmed people and walked out of jail. Another shot a man as he lay on the ground. Others went free after shooting their victims in the back. In nearly a third of the cases the *Times* analyzed, defendants initiated the fight, shot an unarmed person or pursued their victim — and still went free." <sup>iii</sup>

Now there are beginning to be more scientific studies of these laws to determine whether they increase or decrease crime. A recent study done at Texas A&M states "Results indicate the laws do not deter burglary, robbery, or aggravated assault. In contrast, they lead to a statistically significant 8 percent net increase in the number of reported murders and non-negligent manslaughters." <sup>iv</sup> Another study, using monthly data from the U. S. Vital Statistics was reported in a paper for the National Bureau of Economic Research. The summary of the study states:

"Our results indicate that Stand Your Ground laws are associated with a significant increase in the number of homicides among whites, especially white males. According to our estimates, between 28 and 33 additional white males are killed each month as a result of these laws. We find no consistent evidence to suggest that these laws increase homicides among blacks. Auxiliary analysis using data from the Supplemental Homicide Reports indicates that our results are not driven by the killings of assailants. We also find that the stand your ground laws are not related to non-homicide deaths, which should not respond to gun laws. Finally, we analyze data from the Health Care Utilization Project to show that these laws are also associated with a significant increase in emergency room visits and hospital discharges related to firearm inflicted injuries. Taken together, these findings raise serious doubts against the argument that Stand Your Ground laws make public safer." <sup>v</sup>

Although this one study finds an increase in white males killed under Stand Your Ground, that does not mitigate our other concern about Stand Your Ground – that is has a negative effect on race relations in many areas and tends to make young black men targets for racism. Such exacerbation does not require large numbers but rather high profile cases where a white or, as in the George Zimmerman case, a Hispanic shooter, may base his "reasonable" fear of deadly harm on the color or ethnic group of the person he/she fears and shoots. Looking at incidents in many of our states, we have grave concern about these laws exacerbating racial and ethnic conflict. For Stand Your Ground Laws this is compounded by the results of trials of shooters and the difference in outcomes for white and black shooters. Again, the comprehensive Tampa Bay Times articles found: "Defendants claiming "stand your ground" are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white." <sup>vi</sup>

Using data from FBI Supplementary Homicide Reports, a study by John Roman of the Urban Institute found that homicides with a white perpetrator and a black victim are ten times more likely to be ruled justified than cases with a black perpetrator and a white victim, and the gap is larger in states with Stand Your Ground laws. Roman also looked at 2,631 cases where “there were single victim and single shooter, they are both male, they are strangers, and a firearm is used”, attributes that match the Trayvon Martin case. He found: “Racial disparities are much larger, as white-on-black homicides have justifiable findings 33 percentage points more often than black-on-white homicides. Stand Your Ground laws appear to exacerbate those differences, as cases overall are significantly more likely to be ruled justified in SYG states than in non-SYG states.”<sup>vii</sup>

Our concern is even graver when we consider the possibility that stand your ground issues might be combined with CCW permit issues if the federal government ever enacted national CCW reciprocity legislation. A national CCW reciprocity law would be even worse than imagined because of the different state laws and people’s experience with their state Stand Your Ground laws. Already we see by looking at arrests in New York State that gun owners often do not understand the CCW laws of others states even though they may get a sheet with their permit explaining these. Oddly, they do not even understand that New York City does not allow anyone from another state to carry guns there even though its laws are widely discussed and criticized by the gun lobby. Guns have been found unlocked in NYC hotel rooms, found at security check points and even under a cushion in the seat in a lobby of a hotel near the World Trade Center. When the gun was traced, the owner said he knew he could not take it through security at the Memorial and so left it under the cushion for later retrieval. The TSA reports an increase in number of guns discovered at security even though everyone knows they should not be taken on a plane. According to an AP story: “In the first six months of this year, Transportation Security Administration screeners found 894 guns on passengers or in their carry-on bags, a 30 percent increase over the same period last year.” Furthermore, “Eighty-five percent of the guns intercepted last year were loaded.”<sup>viii</sup>

If people cannot get this part of gun carrying correct now, how will they understand in what states Stand Your Ground is permitted and what the state nuances on Stand Your Ground are? Are they in a state where they can only stand their ground in a car? Are they in a state where they can protect property and what are the rules? CCW permit holders would have to know these rules if national reciprocity were passed. States United to Prevent Gun Violence has always opposed national reciprocity on the grounds that it would force states with strong CCW permit laws to accept the permit holders and guns from states with lax permitting law. Adding Stand Your Ground laws to the mix makes things even more dangerous. Imagine a CCW permit holder from a state with lax CCW permitting laws and with a Stand Your Ground law coming into an urban area with strong CCW permitting laws and no Stand Your Ground law and thousands of people of different ethnic groups, races, languages, ways of communicating. The chances for someone to feel threatened and then use a firearm inappropriately would surely increase.

Finally, within their individual states our state organizations are working to modify, repeal or prevent the passage of Stand Your Ground laws while they work to strengthen the permitting requirements and training requirements for CCW permits. Stand Your Ground laws combined with easily obtained CCW permits are bad public policy, will lead to more death and injury, and will not prevent more crime.

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States United to Prevent Gun Violence (SUPGV) is a national non-profit organization working to decrease gun death and injury and build communities free from the fear and devastation bred by gun violence. An association founded in 1999 by the state gun violence prevention groups themselves, SUPGV's mission is to support the 26 existing state-based gun violence prevention organizations and build new groups.

As well as States United itself, the following state affiliates sign on to this testimony:

Women Against Gun Violence, CA  
 Ceasefire Colorado Capitol Fund  
 Connecticut Against Gun Violence  
 Georgians for Gun Safety  
 Hawaii Coalition to Prevent Gun Violence  
 Hoosiers Concerned about Gun Violence  
 Iowans for Gun Safety  
 Maine Citizens Against Handgun Violence  
 Stop Handgun Violence, MA  
 ProtectMN  
 CeasefireNJ  
 North Carolinians Against Gun Violence  
 Ohio Coalition Against Gun Violence  
 Texas Gun Sense  
 Gun Violence Prevention Center of Utah  
 The Virginia Center for Public Safety  
 Washington Ceasefire  
 WAVE Educational Fund, WI

Other affiliates - Illinois Council Against Handgun Violence, Arizonans for Gun Safety, New Mexicans for Gun Safety, New Yorkers Against Gun Violence and CeasefirePA - are submitting separate testimony.

Contact for SUPGV: Barbara Hohlt – 917-860-9293, [bhohlt@supgv.org](mailto:bhohlt@supgv.org)

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<sup>i</sup> Utah actually passed such a law earlier and hence there are 27 states with these laws and another seven that have them in some form due to legal decisions.

<sup>ii</sup> <http://www.apainc.org/html/APA+Castle+Doctrine+Principles.pdf>

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<sup>iii</sup> <http://www.tampabay.com/stand-your-ground-law/main#about>

<sup>iv</sup> C. Cheng and M. Hoekstra, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine," Texas A&M Department of Economics, 29 May 2012, available at [http://econweb.tamu.edu/mhoekstra/castle\\_doctrine.pdf](http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf).

<sup>v</sup> C. McClellan and E. Tekin, "Stand Your Ground Laws, Homicides and Injuries," National Bureau of Economic Research Working Paper No. 18187, June 2012.

<sup>vi</sup> Kris Hundley, Susan Taylor Martin and Connie Humburg, Times staff writers, "Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied", June 1, 2012. <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>

<sup>vii</sup> John Roman, "Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data", Urban Institute, July 26, 2013.

<sup>viii</sup> Joan Lowy, AP, "More air passengers showing up with guns, AP finds", Denver Post, July 3, 2013. [http://www.denverpost.com/ci\\_23588164/more-air-passengers-showing-up-guns-ap-finds](http://www.denverpost.com/ci_23588164/more-air-passengers-showing-up-guns-ap-finds)

MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA, STATEMENT



TESTIMONY of Moms Demand Action for Gun Sense in America

**TO: Senate Judiciary Committee Subcommittee on The Constitution, Civil Rights and Human Rights**

**Subject: "Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force**

October 29, 2013

Chairman Durbin and Members of the Committee,

Moms Demand Action is pleased to submit this statement and applauds your leadership in holding a public hearing on the critical issue of Stand Your Ground laws and what they are doing to our society, our families, and our children.

**Background on our organization:** Much like Mothers Against Drunk Driving was created to reduce drunk driving, Moms Demand Action for Gun Sense in America ([www.momsdemandaction.org](http://www.momsdemandaction.org)) was created to demand action from legislators, state and federal; companies; and educational institutions to establish common-sense gun reforms. We are a non-partisan grassroots movement of American mothers demanding new and stronger solutions to lax gun laws, loopholes and policies that for too long have jeopardized the safety of our children and families.

**Our position on gun laws:** Moms Demand Action supports the 2nd Amendment. Period. The death of an American child or teen every 3 hours and 15 minutes at the barrel of a gun was never the intent of the 2nd Amendment and is not a necessary consequence of the 2nd Amendment.

Mothers in urban, suburban and rural America are angry that we are losing so many of our loved ones to gun violence. Moms Demand Action is a non-partisan, grassroots movement demanding a safer society, calling for common sense. We have more than 100,000 members and a chapter in every state in this country.

We are a young, healthy, growing organization. We are educating, motivating, and mobilizing moms and families to take action that will result in stronger laws and policies to save lives. We support these common

sense solutions to help address gun violence in the United States:

1. Require background checks for all gun and ammunition purchases;
2. Ban assault weapons and ammunition magazines that hold more than 10 rounds;
3. Track the sale of large quantities of ammunition, and ban online sales;
4. Establish product safety oversight of guns and ammunition, and require child-safe gun technology;
5. Support policies at companies and public institutions that promote gun safety;
6. Counter the gun industry's efforts to weaken gun laws at the state level.

**Moms Demand Action on Stand your Ground laws:** Our organization looks at all policies from the perspective of parents raising families in America. The need to protect our children and loved ones is paramount to all that we do. We understand that conflict in society and in day to day life is basic to the human experience and part of what we prepare our children to deal with in a healthy, productive way. Stand Your Ground laws do not promote healthy conflict resolution. Too often they foster an "attack" response or even worse, vigilante "justice". And because easy access to guns and concealed carry laws make lethal weapons immediately available to most anyone – including the untrained and irresponsible – that attack response becomes deadly.

Some claim that these faulty laws assure innocent people of greater safety. From what we have learned, studies indicate that these laws do NOT make us safer. A recent Texas A&M study analyzed 20 states with Stand Your Ground laws, including Florida, and found that the laws do not deter violent crime. In fact, there is a clear increase in homicides in those states, resulting in up to 700 more shooting deaths nationwide each year. Stand Your Ground laws also disproportionately affect communities of color. According to an Urban Institute study, when white shooters kill black victims, 34 percent of the resulting homicides are deemed justifiable, while only 3 percent of deaths are ruled justifiable when the shooter is black and the victim is white. Far from making us feel safe, these findings and recent cases are cause for alarm, and highlight the fact that human error is allowed to reign under these laws.

Moms Demand Action was formed after the horrific slaughter of 6 and 7 year old children in Connecticut. Many of our charter members were mothers and fathers of similar-aged children who felt a painful empathy for those devastated families – an empathy which drives us still. As we have learned more about the dysfunction of our country's gun laws, we have expanded our membership to thousands of parents of children of all ages.

For parents of teenagers, Stand Your Ground laws add a level of concern which should not be tolerated in modern society. Walking down dark streets, sneak drinking, and hanging out in secluded areas – all are risky behaviors that are fairly common among adolescents. Facing a trip to a detention hall or even the police station are the consequences of most of these actions. Facing a gun should not be.

Stand Your Ground laws permit deadly force under certain circumstances. But it is much easier for the shooter to claim those circumstances existed than for the dead teenager to tell his or her side of the story. For generations, American mothers and fathers have taught their children that this country is exceptional, because we are a nation of laws and justice. Kill first, explain later is not justice.

Moms Demand Action has over 100,000 members and is expanding, because we fear for the safety of our

children and are committed to doing everything that we can to protect them. Stand Your Ground laws on top of concealed carry and the gun industry's feverish endeavor to sell more guns put our children at risk. Children - and adults - who may simply have been in the wrong place at the wrong time are now more likely to die at the hands of the armed and angry. This is unacceptable. Standing, killing and explaining later should not be tolerated in any community.

We call on Congress to address the Stand Your Ground crisis in any way possible and applaud the Subcommittee for initiating that effort today. We also stand committed to turning back the damage the proliferation of these ill-conceived laws has wrought in every state they exist - especially as proponents seek to couple them with more concealed deadly weapons through "reciprocity" action by Congress.

Thank you for your attention and action on this issue. We believe it is possible to bring gun sense to the laws of our country and look forward to working with the Committee to reach our goal.

TEXAS PUBLIC POLICY FOUNDATION, DR. WENDY GRAMM, AUSTIN, TEXAS, AUGUST 12, 2013, LETTER



August 12, 2013

The Honorable Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

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Dear Senator Durbin:

In an age of ever-expanding federal power, with our constitutional freedoms increasingly circumscribed, the ideas of limited government, free markets and federalism have become more vital than ever. Those are the pillars of the American Legislative Exchange Council's (ALEC) mission. Moreover, for 40 years, ALEC has provided an indispensable forum for the exchange of diverse policy ideas. For these reasons, we at the Texas Public Policy Foundation (TPPF) support ALEC and its important mission.

Like ALEC, TPPF believes in the core values of our Founding Fathers. We develop and discuss policies that promote these core values in a number of areas, occasionally partnering with ALEC. For example, TPPF has led the nation in criminal justice reform. In Texas, 8,000 prison beds are empty where only six years ago we faced a deficit of 17,000 prison beds. Crime rates are down, as is recidivism, and public safety has improved, all with enormous cost savings to the public. ALEC helped to educate state legislators on these vital reforms, which are gaining increasingly bipartisan support.

Public policy organizations such as TPPF and ALEC deserve to be respectfully engaged even by those opposed to limited government and individual liberty. We are disappointed that, instead, it appears you are attempting to intimidate ALEC and like-minded groups whose policy views you disagree with.

As the Framers of our Constitution foresaw, the expansion of federal power has resulted in the increasing intimidation and suppression of political opposition—from the abuses of the IRS and FEC to your own letter. That's why we recently joined a lawsuit against the abuses of the Internal Revenue Service. We will not be intimidated.

Very respectfully,

*Wendy Gramm*  
Dr. Wendy Gramm  
Chairman of the Board

*Brooke Rollins*  
Brooke Rollins  
President & CEO

cc: The Hon. John Cornyn, The Hon. Ted Cruz