

Stand Your Ground:  
An Analysis of Today and a Forecast of the Future

By

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## I. INTRODUCTION

*“The law is never static; it is always changing, being interpreted or redefined, as regulators and judges strive, with varying degrees of success, to ensure that the law constantly reflects changes in society itself.”*

Throughout the history of the United States, and even within the state of Florida, there have been numerous occasions where laws have been passed and controversy amongst society and the government has ensued. Florida’s “Stand Your Ground” law has been criticized since its enactment. Since this law became effective in October of 2005, it would be hardly accurate to claim that this law made a clean and swift transition in terms of its application and acceptance. Despite this specific statute’s lack of fluidity from paper to reality, it is not uncommon for laws to be amended, debated, and altered from their original form, even over periods spanning from months to years. This process of change is for the purpose that these laws better fit a permissible compromise between what the purpose of the law is to be and what the general consensus is of the law itself.

The goal of this paper is not to determine one way or the other if this law should or should not be a part of Florida’s statutes, and more specifically, it is not to support or suggest any single reform. The goal is to present a detailed and non-biased account of the law since its beginnings so as to develop a stronger understanding of its implications and future. There are many laws that have become generally accepted whose components are being unquestionably applied in the courtrooms and society. Stand Your Ground does not fall under this category. Stand Your Ground is being discussed in the state houses and committees, its controversy is making headlines across the state, as well as the nation, on a regular basis, and its application is being countered in the courtrooms all the time. This is a law that needs to be picked apart and

thoroughly understood so that one can make their own unbiased and accurate perceptions of it as it appears in the media and around us.

First, this analysis will delve into the general scope of Florida's Stand Your Ground legislation and provide an overview of its influence throughout the United States. Then, the law itself will be discussed in terms of its development and separate components and later applied to the various cases and controversy that have been and still are emerging today. Finally, an in-depth look at the legislative history of this law and some recent proposed reforms will be considered. The analysis will conclude with a brief deliberation of the projected path of Stand Your Ground and follow up with an overall conclusion of the information that has been demonstrated.

### *National Influence*

The influence that Florida's original legislation in 2005 had on the remaining United States is unmistakable. Since Stand Your Ground became a part of Florida's statutes, more than twenty other states have enacted legislation requiring no duty to retreat and nine states that specifically include standing one's ground in the language of the statute.<sup>1</sup> Each of these states' laws is accompanied by their own unique modifications, thus expanding the scope of Stand Your Ground even further. By Florida being the first state to implement such legislation into their statutes, they have been the leader and groundbreaker of a new national movement concerning self-defense and gun control. Florida has been, currently is, and likely will be the number one body to direct the nation under Stand Your Ground, whether that is in regards to its expansion, regression, or stagnancy.

At its origination, Florida's Stand Your Ground law was unique. Although the idea of self-defense rights is not new in the United States, the expansion of those rights to any public or

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<sup>1</sup> "Self-Defense and 'Stand Your Ground.'" *National Conference of State Legislatures*, 30 Aug 2013.

private arena in which a threat of seriously bodily harm is present can certainly be considered a revolution in this area. Before Stand Your Ground was implemented into the legal system of Florida, the Castle Doctrine governed a majority of self-defense in the United States and will be discussed in more detail later on.

### *Influence on Other States*

Florida created a noticeable trend throughout the United States when it enacted its Stand Your Ground law, and the waves of this trend are still having an impact almost ten years later. For example, Arizona is one of the states that also eliminated the requirement for a duty to retreat, and their law is entitled “Make My Day” after a Clint Eastwood phrase from an older film.<sup>2</sup> Not only has Arizona followed in the footsteps of Florida in creating this law, but they have also referenced Florida’s cases in relation to their own. Known as the ‘reverse Trayvon Martin case,’ the victim was Hispanic and the attacker African-American.<sup>3</sup> Although the intimate facts and readings of the case aren’t relevant to this analysis in a national respect, the notion of how Florida’s Stand Your Ground provisions and cases have spread to states on the other coast of the United States surely is. The following image depicts a fairly recent map of Stand Your Ground’s reach:

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<sup>2</sup> Phillip Sherwell, “Trayvon Martin: How ‘Stand Your Ground’ Laws in 20 States Spurred Hundreds of Shootings.” *The Telegraph*, 20 July 2013.

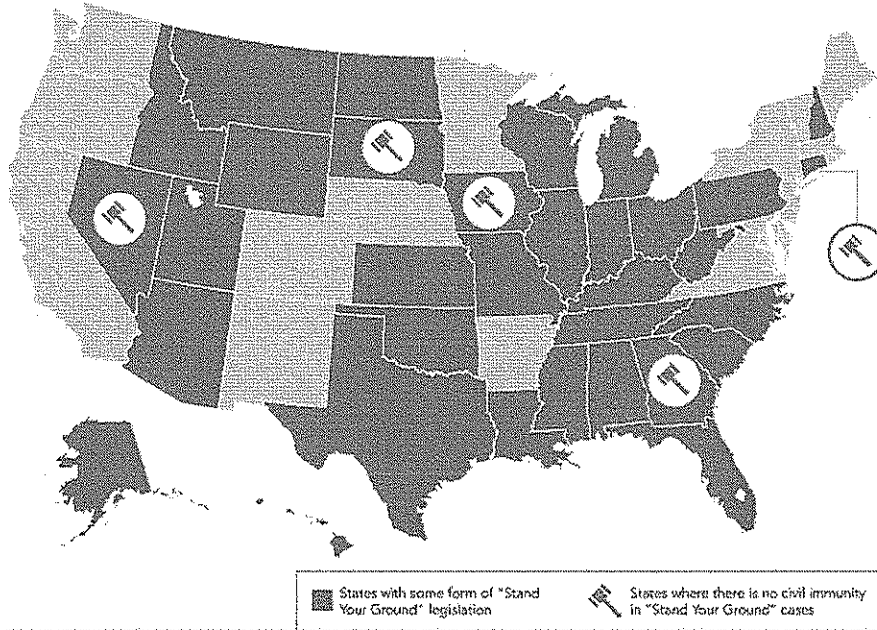
<sup>3</sup> *Ibid.*

A HUFFINGTON POST GRAPHIC



## "Shoot First," Explain Later

Florida's "Stand Your Ground" law, sometimes called "Shoot First" by critics, allows people who feel imminently threatened to use deadly force before retreating from the threat. State laws such as this one asserting a sweeping right to self-defense outside the home have rapidly expanded in recent years and have come under fire in the wake of the Trayvon Martin shooting. While George Zimmerman's lawyers did not use Florida's law as part of the defense in the criminal trial, the law did contribute to the delay in his arrest. Like most states' "Stand Your Ground" laws, Florida's is written in a way that would make it extremely difficult for the Martin family to pursue a civil trial against Zimmerman.



### "Stand Your Ground" Legislation By Year

1990s	2004	2005	2006	2007	2008	2009	2010	2011
Connecticut Hawaii Iowa Utah	Illinois	Florida Nevada	Alabama Alaska Arizona Georgia Idaho Indiana Kansas Kentucky Louisiana Michigan Mississippi Oklahoma South Carolina South Dakota	Missouri North Dakota Tennessee Texas Wisconsin	Ohio West Virginia Wyoming	Montana		New Hampshire North Carolina Pennsylvania

Source: The Association of Prosecuting Attorneys

THE HUFFINGTON POST

### ALEC & the NRA

Monumental in the role of promoting Stand Your Ground from capitol to capitol has been the campaign designed and executed by the National Rifle Association (NRA) and the American

Legislative Exchange Council (ALEC).<sup>4</sup> As staunch supporters of the legislation, these organizations have pooled their resources, both politically and financially, to spread the word and acceptance of Stand Your Ground. In addition, they dedicate themselves to persuading Americans of the necessity of such legislation and the essential protection it secures for their fundamental rights centered on self-defense. Between these two groups alone, they have spread the word of Stand Your Ground in a myriad of ways via the internet, in the state legislatures, and in other public arenas.

To gain footing in the states individually, ALEC, known for its conservative qualities, used their own unique version of Florida's Stand Your Ground law soon after it was passed in 2005 and exhibited this as their model standard for Republican representatives in other states to endorse on their respective state's floor. This tactic proved to be successful, as approximately twenty-two states shortly followed suit and gained the Stand Your Ground ranks.

Unsurprisingly, the NRA has cemented their name in Stand Your Ground since day one of the legislation's construction and drafting and has consistently remained one of the leading partners through the present with the assistance of millions of dollars in campaigning and funding. From 2007 until 2012, it is known that the NRA donated Florida's maximum amount of \$500 each to twenty-three Stand Your Ground legislators during that period.<sup>5</sup> Other monetary support for the expansion of Florida's self-defense law consists of approximately \$165,000 funneled directly into the state's Republican Party.<sup>6</sup> Additionally, the NRA's Institute of Legislative Action (NRA-ILA) has been a substantial contributor in promoting Stand Your

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<sup>4</sup> Amy Silverstein. "National Rifle Association, ALEC behind Stand Your Ground Laws Across the Country." *Global Post*, 12 April 2012.

<sup>5</sup> Josh Israel. "How the NRA Fueled Florida's 'Stand Your Ground' Law." *Think Progress*, 22 Mar 2012.

<sup>6</sup> *Ibid.*



Ground through its role of lobbyist for the organization as a whole.<sup>7</sup> Members of the NRA have their feet firmly planted in Stand Your Ground not only because it promotes the expansion of the ordinary citizen's right to protect themselves, but also because the use of firearms is relative to said expansion, the core of this organization's entire purpose and vision.<sup>8</sup>

Despite the fact that Marion Hammer completed her role as president of the NRA, she still continues to lobby for the group, specifically in its endorsement of Stand Your Ground legislation.<sup>9</sup> Some of Hammer's argument for the law include that it was "necessary to restore and codify the Castle Doctrine and self-defense rights that the courts have eroded over the years."<sup>10</sup> It is without a doubt that the NRA, as well as its many followers, have echoed similar remarks and support for this law through figures such as Hammer during Congressional sessions, through the NRA's private events, and also importantly, in the public arena. With the financial and idealistic support of this organization, Stand Your Ground presented a strong case to Florida's members of Congress in 2005, and is more than likely a sufficient reason why it has been maintained so fiercely in Florida's statutes almost a decade later in 2014.

### *Opposition*

There also exist those against Stand Your Ground and the consequences this law has had on society. These individuals and organizations are trying to diminish the support of Stand Your Ground through protests, assemblies, and/or word-of-mouth. After conducting research and holding meetings, the National District Attorneys Association found "...that there is a real and immediate need to test the utility and soundness of such laws" in regards to Florida's Stand Your

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<sup>7</sup> "About NRA-ILA." *NRA-ILA Institute of Legislative Action*.

<sup>8</sup> Zachary Weaver. "Florida's 'Stand Your Ground' Law: The Actual Effects and the Need for Clarification." *University of Miami Law Review*, 1 Oct 2008.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

Ground and similar laws in other states.<sup>11</sup> Another organization, the American Federation of State, County, and Municipal Employees (AFSCME) is an active lobbyist and has created their own proposed resolutions to end Stand Your Ground prominence and has been promoting these ideas on a variety of public platforms.<sup>12</sup> In addition to AFSCME, there are quite prominent figures that have been speaking out against Stand Your Ground, and not just Florida's Congressional members. President Barack Obama has made a public request that the states review their own Stand Your Ground laws and consider reform.<sup>13</sup> His opinion on the law can be recognized in this question he made to the public, "If we're sending a message as a society in our communities that someone who is armed potentially has the right to use those firearms, even if there's a way for them to exit from a situation, is that really going to be contributing to the kind of peace and security and order that we'd like to see?"<sup>14</sup>

### *Dream Defenders*

Another, more well-known group of critics of this law call themselves the "Dream Defenders." According to their website, they are "a new generation of youth, leaders, and organizers for social change" and are "committed to defending the dreams of our country and our generation."<sup>15</sup> In addition, they also describe themselves as "a human rights organization, directed by Black & Brown youth and Inequality & the Criminalizing of our Generation with nonviolent Direct Action and building of collective power in our communities."<sup>16</sup>

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<sup>11</sup> Steven Jansen. "Expansions to the Castle Doctrine." *National District Attorneys Association*, p. 3.

<sup>12</sup> "'Stand Your Ground' Laws, Public Safety and Accountability and the Pernicious Influence of the American Legislative Exchange Council." *AFSCME*, 2012.

<sup>13</sup> Phillip Sherwell. "Trayvon Martin: How 'Stand Your Ground' Laws in 20 States Spurred Hundreds of Shootings." *The Telegraph*, 20 July 2013.

<sup>14</sup> *Ibid.*

<sup>15</sup> "The Crisis." *Dream Defenders*. <http://dreamdefenders.org/thecrisis/>.

<sup>16</sup> *Ibid.*

Largely governed by the doctrines of historical African American leader Malcolm X, the Dream Defenders have utilized certain tactics to accomplish a handful of goals, one of which being the complete repeal of Florida's Stand Your Ground law as a result of the fatal shooting of the young Trayvon Martin.<sup>17</sup> They have been creating and promoting their own 'Trayvon's Law,' which seeks to do a large number of things, but in relation to Stand Your Ground, it attempts to repeal the law in its entirety, as well as retract immunity without judicial review and also attempts to implement a new burden of proof in self-defense cases.<sup>18</sup>

The Dream Defenders aren't just a group of individuals with goals and a website. They are also known for taking action. In a matter of days following the acquittal of George Zimmerman in the Trayvon Martin case, over three dozen Dream Defenders went straight to Tallahassee and conducted a sit-in at the capitol.<sup>19</sup> They refused to leave until a special session hearing was called to review the Stand Your Ground law, but the most they received was a discussion with Governor Rick Scott. They were able to voice their concerns to Governor Scott, but ultimately were told no such session would take place, after which they left Tallahassee after thirty-one days.<sup>20</sup> According to a woman in the group, upon leaving the capitol, their next step was to take their campaign "to the streets."<sup>21</sup> The Dream Defenders are undoubtedly one group in the state of Florida that has played a role in raising awareness of the law.

Aside from the big names and organizations, the influence of Stand Your Ground can be easily observed by opening almost any popular newspaper. This legislation has not only provoked a call for action on behalf of expensive groups and their political counterparts, but has simultaneously placed Stand Your Ground at the forefront, or certainly more so than the back

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<sup>17</sup> "Florida's Trayvon Law." *Dream Defenders*.

<sup>18</sup> *Ibid.*

<sup>19</sup> Rich Phillips. "Dream Defenders End Sit-in Protest of Florida's Stand Your Ground Law." *CNN*, 15 Aug 2013.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

burner, of America's media agenda. Stand Your Ground is headlining at least a handful of any given news publisher's editions at any given point in time. Although this may have been partially inspired by recent events in the Trayvon Martin case and other similar legal disputes, Stand Your Ground has nonetheless been influencing thousands, and potentially millions of citizens in America and overseas solely through media promotion.

Through the course of American legal history, there have been many instances in which laws from one region, state, or area gradually adopted in the laws of other regions and states, such as laws relating to civil rights or equality. Self-defense is another category on this list, but in this case, the state of Florida was the one to ignite the fire that spread to more than half the nation in less than a decade. These states took from the idea of Stand Your Ground and furthered self-defense, but they also looked close at Florida's language and model in doing so. Not only is Florida's influence evident in the reflection of similar laws that have been recently enacted in other states, but it also has been the spotlight of national attention. President Barack Obama has made statements addressing the issue, as have celebrities and a countless amount of federal and state representatives. National and state-wide organizations are rallying and publicizing Stand Your Ground, in both positive and negative lights, and have been expending a significant amount of time and money just on this issue. Stand Your Ground is not just relevant in the state of Florida; it is relevant on a national platform as well.

Although Stand Your Ground was not word-for-word a part of America's legal culture in the 1970's, an excerpt from the case *Gregg v. Georgia* may provide useful introductory insight into the following analysis of the law:

The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to

believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they “deserve,” then there are sown the seeds of anarchy of self-help, vigilante justice, and lynch law.<sup>22</sup>

This excerpt from *Gregg* presents a few points to consider. One is that Stand Your Ground has actually been criticized for promoting a “vigilante justice.”<sup>23, 24</sup> This law essentially enables citizens to take certain situations into their own hands while the government trusts them to utilize a well-founded judgment. Is Stand Your Ground promoting a stable stability more than it did before its enactment? How much of an influence did such vigilante justice play before Stand Your Ground? Was it an active part of society, prompting the implementation of such a law, or was the idea completely new? These are important things to think about in the chapters that follow.

### *Why Stand Your Ground?*

Laws become adopted for several reasons, but why did the state of Florida feel the need to expand from the original Castle Doctrine and add these new components? Multiple speculations have been made as to the timing and reasoning of this law, and the National District Attorneys Association experts put forth a brief and concise list of their own opinions. Their four reasons are: (1) a diminished sense of public safety, (2) a need to protect the vulnerable, (3) perceived imbalances in the justice system, and (4) the recent transition in gun legislation.<sup>25</sup> Despite the eventual arguments against each of these assertions, a consideration of them may still prove resourceful. Events such as the September 11<sup>th</sup>, 2001 terrorist attacks and the alarming rate of domestic violence and abuse have the potential to create a call for extended safety measures.

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<sup>22</sup> *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

<sup>23</sup> Nicole Flatow. “Four Ways Stand Your Ground is Promoting Vigilantism.” *ThinkProgress*. 29 Oct 2013.

<sup>24</sup> Lucas Powers. “U.S. ‘Stand Your Ground Laws’ Unlikely to Budge.” *CBC News*. 19 Jul 2013.

<sup>25</sup> Steven Jensen. “Expansions to the Castle Doctrine.” *National District Attorneys Association*, p. 4.

Unfortunately, law enforcement isn't usually at the scene at the exact moment that potential violence could quickly unfold, at least in most cases. In regards to gun legislation, the allowances in these laws in some areas have created an environment where individuals can have firearms, become involved in an altercation with another individual, who may or may not have a firearm themselves, and the firearm is used by its owner, causing unnecessary violence. This theory deserves some recognition and provokes new perceptions regarding Stand Your Ground, but doesn't take into account factors such as organizational funding by the big-name companies and their possible hidden political motives.

Although the National District Attorneys' Association presents thoughtful ideas, other reasons have presented themselves in regards to why Stand Your Ground evolved from the traditional duty to retreat and why this took place during the time frame that it did. Some of the hypotheses about when Stand Your Ground was born also fall under the category of why the law has been so seemingly difficult to repeal or amend. The domination of the Republican party, not only in the state of Florida but also in many other states as well, stood as a significant factor in gathering support for the law as it became a part of the law and later, society.<sup>26</sup> The Republican party's cohesiveness with groups such as the NRA and ALEC provide connections for them to each contribute to mutual interests, such as desired expansions in gun possession and legislation. With the majority party behind the law and the strong financial backbone of organizations such as those just mentioned, it is not so questionable that once an idea such as Stand Your Ground became real, the support was there and in great number. There was certainly opposition to the law upon its enactment in 2005 and still is making headlines today, but at the time, the advocacy for the law defeated any advocacy against it. These arguments, and many others, are some of the

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<sup>26</sup> Sean Sullivan. "Four Reasons Why 'Stand Your Ground' Won't Be Repealed." *Washington Post*, 19 July 2013.

justifications behind why and how Stand Your Ground came to its original state upon enactment in 2005.

## II. OVERVIEW OF STAND YOUR GROUND

Despite the lengthy and wordy nature of Florida statute's chapter 776 "Justifiable Use of Force," it summarily involves less than a handful of core attributes that comprise the law as a whole. In the light of today's heated controversy that surrounds this law, sufficient knowledge of these points is essential for its accurate application and future reform. Although each of these points is founded in well-known legal theories, they have become a source of much debate and contention. This has led to the development of groups and individuals opposing the law as a whole and wanting it's repeal, while confirming others', such as Representative Dennis Baxley's, belief in the law as beneficial and parallel to the needs of society and its citizens. When asked if he thought any changes needed to be made to Stand Your Ground as it exists in the Florida statutes today, Rep. Baxley's reply was:

No, we are talking decisions made when a victim has seconds to act. Monday morning quarterbacks can always speculate about what you could have done. The standards of proportionality are "meet force with force including deadly force if necessary" and "reasonable man standard", meaning that any reasonable person would look at the facts and agree you were at risk of death, rape, or severe bodily harm.<sup>27</sup>

In the event that Stand Your Ground in Florida is amended, either as a whole or by its parts, or even if the law as written remains intact, understanding and evaluating its components is paramount to constructing and founding an educated mindset about the law, not only because it is so important within the state of Florida, but also because this law is making headlines across the United States.

### *Castle Doctrine*

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<sup>27</sup> Fl. Rep. Dennis Baxley. Interview by Erica Beers. Personal interview, 27 Jan 2014.



The footholds behind Stand Your Ground and the law's supported notion of an expansion to self-defense justifications springs from the "Castle Doctrine." Developed during the early age of the English common law, this doctrine states that when faced with an attack, a person was required to retreat and thereby evade the attack in any way possible. The sole exception to this law was if the person under attack was in their own home, or "castle," in which case their duty to retreat was eliminated. The logic behind no duty to retreat in the home rests on some version of the explanation that "when in the home, a person has already retreated as far as he can from the perils of society."<sup>28</sup> Judge Benjamin Cardozo provided a thorough reasoning of the Castle Doctrine in these statements in 1914: "It is not now and never been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground, and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home...Flight is for sanctuary and shelter, and shelter if not sanctuary, is in the home."<sup>29</sup>

As with the majority of the common law, the Castle Doctrine has been revised and altered over time to reflect the changing societal atmosphere. It would be a novel in itself to record and describe how each state has either maintained or transformed the Castle Doctrine, but the significant point to take away here is that the Castle Doctrine stood as the platform to which many states branched off from in creating their own versions of this legislation, many of them similar to Stand Your Ground but in their own unique ways.

### *No Duty to Retreat*

One of the most distinct parts of Stand Your Ground is the departure from the original Castle Doctrine requiring a person to retreat. According to Florida in October of 2005, this doctrine was no longer in effect, as the original Stand Your Ground states, "A person who is not

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<sup>28</sup> P. Luevonda Ross. "The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground." *Southern University Law Review*, p. 2. 15 Oct 2007.

<sup>29</sup> Steven Jansen. "Expansions to the Castle Doctrine." *National District Attorneys Association*, p. 3.

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...”<sup>30</sup> Through this language, Stand Your Ground places the ultimate decision-making authority on the victim in potentially violent situations to determine whether or not to retreat, and additionally whether or not to execute any amount of force.

In the beginning, English common law declared that a citizen possessed the duty to retreat in all situations, aside from those in their homes. Now, according to Stand Your Ground, there is no duty to retreat in any environment, as long as the victim feels threatened with serious harm and is not engaged in any unlawful activity. The duty to retreat travelled from only being applicable in one arena, to being applicable in anywhere one has “a legal right to be,” which has the potential to take place anywhere. Some examples of defendants that have been granted immunity under Florida’s Stand Your Ground law include Andrew Smith, Jorge Saavedra, Carlos Catalan-Flores, Michael Monahan, and Charles Regan Markham.<sup>31</sup> These defendants were involved in altercations that occurred in a vehicle, at a high school bus stop, at a night club, on a boat, and on a racquetball court.<sup>32</sup> Of the hundreds of Stand Your Ground cases in Florida, these are just a few that demonstrate just how expansive this law can apply.

The elimination of the requirement of the common law duty to retreat has translated to be interpreted as one having no need to avoid a violent confrontation, even if it is possible to do so. Some have seen this aspect as turning “the traditional value for human life reflected in the centuries-old Castle Doctrine and self-defense laws on its head.”<sup>33</sup>

### *Use of Force, Even Deadly Force*

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<sup>30</sup> Fla. Stat. § 766.013(3) (2005).

<sup>31</sup> “Florida’s Stand Your Ground Law.” *Tampa Bay Times*, 2013.

<sup>32</sup> *Ibid.*

<sup>33</sup> Steven Jensen. “Expansions to the Castle Doctrine.” *National District Attorneys Association*, p. 7.

Not only does Stand Your Ground essentially eliminate any duty to retreat, it ventures even farther by lawfully permitting those in a position that fear great bodily harm or death to defend themselves to “stand his or her own ground and meet force with force, including deadly force...”<sup>34</sup> There are stipulations associated with this, such as that one must “reasonably believe it is necessary to do so to prevent death or great bodily harm...” and also that such force can be utilized as a prevention measure against the action of a forcible felony.<sup>35</sup> However, the boundaries of what one can act upon when presented with the threat of harm or death has been significantly widened.

Through Stand Your Ground, citizens are authorized not only to determine if they should retreat, but they also are granted leeway in deciding whether or not to execute force at any level, even deadly. Although there are provisions which guide citizens in answering the question of whether or not to use force such as whether the individual holds a reasonable fear of great bodily harm, in the moment, the law trusts the victim to make the decision based on their own judgment. The lack of distinction in the language of the law regarding how much force is lawful in situations has certainly led to some questions. There is no specific mention of any amount or nature of the force being used aside from it being “reasonable” and that one may meet “force with force.”

Although the degree of force that may be used is not defined, the statute does include circumstances in which force may not be used. A person is not permitted to use force under Stand Your Ground if: (i) the person they are in a confrontation with is a law enforcement officer on duty, (ii) the situation involves child custody, or (iii) the person involved is legally justified to be in the home or vehicle they are currently in. Aside from these three specifications, Stand Your

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<sup>34</sup> Steven Jensen. “Expansions to the Castle Doctrine.” *National District Attorneys Association*, p. 7.

<sup>35</sup> *Ibid.*

Ground allows a person to use force “when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force.”

#### *Civil/Criminal Immunity*

Aside from those allowances while in the presence of violence, the Stand Your Ground legislation also includes provisions regarding the aftermath of the altercation. For example, if a person was found to have been in compliance with the statute and justifiably used self-defense methods, such as force or deadly force, they are “immune from criminal prosecution and civil action.”<sup>36</sup> This applies in all instances with the sole exception of a law enforcement officer being the individual who had the force imposed upon them.<sup>37</sup>

The immunity section of the Stand Your Ground law transfers the decision making of the related action in question from the person executing self-defense to law enforcement. During the subject altercation, the person under threat of harm is the individual who decides whether to retreat, to defend, and/or to use force. Once the action is completed and becomes a matter of the law, Stand Your Ground deems the law enforcement handling the case as the responsible party for deciding whether or not self-defense was justifiably utilized and further, if an arrest needs to be made. If there is no indication that the shooter acted in self-defense in accordance with the law, the shooter will be arrested. On the other hand, if an officer believes the force executed falls within the scope of Stand Your Ground, not only will the individual avoid arrest, they are declared immune from any criminal prosecution and civil actions arising from the subject incident. Naturally, once law enforcement acts in the due process of the law and brings criminal

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<sup>36</sup> Fla. Stat. § 776.032(1) (2012).

<sup>37</sup> *Ibid.*

charges, it is the courts who take it further if necessary in applying this law, as they have been called to do in a variety of cases.

### *Presumption of Fear & Presumption of Reasonableness*

Traditionally, the Castle Doctrine in Florida invoked a ‘reasonable person’ standard, which placed the burden on the defense to show that the force used would fall under what a reasonable person would do. Now, that standard has been replaced with the ‘presumption of fear’ standard for the majority of cases.<sup>38</sup> This standard shifts the burden to the state, therefore allowing significantly more authority on behalf of the citizen. The presumption of reasonableness is fairly new to common law and “provides that a person is presumed to have reasonably believed that deadly force was necessary if the person against whom the force was used had entered or what in the process of unlawfully and forcefully entering a dwelling or occupied vehicle, or if that person was attempting to remove another against that person’s will.”<sup>39</sup> Additionally, this presumption opens the door for lethal force to be used in any arena where a person has a right to be and is the provision through which this area was broadened.<sup>40</sup> With the notion of a presumption of fear, the state has much less leeway in determining whether the use of deadly force was justified or ‘reasonable’ because that decision is now left to the person (in most instances). Although the facts of a case are always relevant, the jury and prosecutor is somewhat inhibited from evaluating them too much due to this presumption.<sup>41</sup>

These two presumptions, coupled with some of the components mentioned before, result in four considerations that must be made on behalf of a person who finds themselves in a

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<sup>38</sup> Steven Jensen. “Expansions to the Castle Doctrine.” *National District Attorneys Association*, p. 5.

<sup>39</sup> *Ibid.*, p. 6.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

situation where Stand Your Ground may apply.<sup>42</sup> Firstly, one must ensure that they are not participating in any illegal activities.<sup>43</sup> Secondly, one must utilize the ‘presumption of reasonableness’ to confirm that there is an attack resulting in threat or fear of bodily harm or death.<sup>44</sup> Next, this same person must analyze the degree of force they are being threatened with by considering their current circumstance.<sup>45</sup> Finally, the consideration of whether or not to use deadly force in must be made as a necessity to either deter ‘death or great bodily harm’ or ‘prevent the commission of a forcible felony.’<sup>46</sup> Summarily, after assessing the circumstances of the situation the person is in, including the threat of a certain degree of harm, based on a doctrine of reasonableness, a decision relevant to those considerations is made as to if to use force, and what degree that force should be.

#### *Judicial Precursors to Self-Defense and Stand Your Ground*

Some of these key attributes of Stand Your Ground, and also the Castle Doctrine, can be traced back to deep judicial roots in 1896, in the case *Alberty v. United States*.<sup>47</sup> In *Alberty*, the majority opinion stated,

A man who finds another, trying to obtain access to his wife’s room in the night time by opening a window may not only remonstrate with him, but may employ such force as may be necessary to prevent his doing so, and if the other threatens to kill him, and makes a motion as if so to do, and puts him in fear of his life or of great bodily harm, he is not bound to retreat, but may use such force as is necessary to repel the assault.<sup>48</sup>

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<sup>42</sup> Lon Lanza Kaduce and Andrea Davis. “License to Kill: A Theoretical Critique of ‘Stand Your Ground.’” *University of Florida Law Panel Session*, 20 March 2013, p. 3.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Alberty v. United States*, 162 U.S. 499, 505, 509 (1896).

<sup>48</sup> *Ibid.*

In this case, the U.S. Supreme Court characterized homicide, or deadly force as previously mentioned, as justifiable when it was committed with “no intent on the defendant’s part to kill his antagonist and no purpose of doing anything beyond what is necessary to save his own life.”<sup>49</sup> This opinion highly reflects much of what resides in the current language of Florida’s Stand Your Ground law and demonstrates that although this law is somewhat revolutionary and one of its kind, it is not an entirely new idea.

An even earlier case in 1877, *Runyan v. State of Indiana*, is one of the earliest in the United States which set the precedent of the right to self-defense, including the justifiable use of deadly force.<sup>50</sup> According to *Runyan*, “When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justifiable.”<sup>51</sup>

*Pell v. State of Florida* is another case, albeit much more recent, that made somewhat of a direct impact on the language and components of Stand Your Ground.<sup>52</sup> This case was decided in 2004, only one year before this law’s enactment. It is plain to see that the judiciary influenced the legislature through their opinion. An excerpt of the majority in this case contains that a person “violently assaulted on his own premises...may stand his ground and use such force as may appear to him as a cautious and prudent man to be necessary to save his life or to save himself from grievous bodily harm.”<sup>53</sup> This does pertain to the Castle Doctrine in that it regards a man in his own home, but differentiates in that it allows, more descript in the opinion, that deadly force is now to the discretion of the homeowner faced with threat. This transition from force to deadly force is substantial and likely served as a reference for the Stand Your Ground

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<sup>49</sup> *Alberty v. United States*, 162 U.S. 499, 505, 509 (1896).

<sup>50</sup> *Runyan v. State of Indiana*, 57 Ind. 80, 84 (1877).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Pell v. State of Florida*, 873 So.2d 448 (2004).

<sup>53</sup> *Ibid.*

law. Additionally, further on in the opinion is the emphasis on elements of proportionality of force and the necessity of that force, both of which proved to be fairly new implications in the self-defense realm.<sup>54</sup>

It is important to know and comprehend the components of Stand Your Ground, but also to understand the cases behind them and what led to the development of these provisions which are so contested today. In a later analysis, one may have the ability to take cases such as that of Trayvon Martin and the others that will be described and use those in comparison to any future amendments or versions of Stand Your Ground.

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<sup>54</sup> *Pell v. State of Florida*, 873 So.2d 448 (2004).



### III. CASES & CONTROVERSY

#### *Controversy in Florida*

Since Stand Your Ground became an active part of the state of Florida, one of the high points of controversy has derived from the hundreds of cases in which it has been applied. The same controversy also stems from the diversity of circumstances, some of whose legality is questionable, that have been considered to meet the justifiable use of force requirement. Regardless of any sole purpose this law exists to serve, it is quite apparent that its application has ventured off into a variety of directions. By analyzing some of these high-profile cases and a study evaluating all of them individually, the debate over Stand Your Ground and when it is and is not to be applied can be more effectively perceived.

#### *Intended vs. Actual Application*

A high point of debate among legislators is whether or not Stand Your Ground is living up to its intended purpose and what the law has been aspiring to achieve. There are large forces standing behind both positive and negative interpretations of the law's application. It is essential to know and comprehend each perception in order to understand the correlation between what is thought of the application of the law relative to what is thought of the law as a whole.

Recorded in the Florida House as an opponent of Stand Your Ground, representative Dan Gelber's opinion of Stand Your Ground includes that it "legalizes dueling" and "fighting to the point of death, without anybody having the duty to retreat."<sup>55</sup> According to State Attorney of Palm Beach, Florida, Barry Krischer, Stand Your Ground "encourages people to stand their

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<sup>55</sup> Weaver. "Florida's 'Stand Your Ground' Law: The Actual Effects and the Need for Clarification." *University of Miami Law Review*, p. 3. 1 Oct 2012.

ground...when they could just as easily walk away.”<sup>56</sup> There are numerous members of law enforcement and of the legislature who have commented similarly in the sense that Stand Your Ground has not been applied according to its proposed intention, or that its proposed intention wasn’t as wholesome to begin with.

An in-depth study by scholars from Texas A&M University yielded results suggesting that “the prospect of facing additional self-defense does not deter crime...we find significant evidence that the laws lead to more homicides.”<sup>57</sup> It is hardly conceivable for one to believe that a law was enacted with the intention that a specific crime rate would increase; on the contrary, one would naturally expect a law to decrease crime. However, this study provides some insight as to the Stand Your Ground law’s real-life application and the results being rendered over time. As the intended application of this law isn’t proving to be wholly compatible with its actual application, a gateway of understanding illuminates the controversy enveloping this legislation, as well as the intricacies from a broad spectrum of parties.

Apart from those who interpret Stand Your Ground as being applied in a manner inconsistent with its original intention are those, such as Representative Dennis Baxley, original sponsor of the law, who stand behind an opinion such as this:

Although some rulings on our self-defense laws have been in question, this is how policy works out in the real world. Flaws in application are not necessarily indicative of a failed policy or statute. Recent highly publicized cases have brought better understanding to the public, judiciary, and law enforcement regarding the legislative intent and better clarity of what our self-defense law is and what it is not. The overall impact has been clear for me. If you empower law-abiding citizens to stop violent acts, they can, they will, and they did. Changes in the law at this time could simply begin a new round of interpretations and applications. There will always be close calls near the foul line. We should

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<sup>56</sup> Weaver. “Florida’s ‘Stand Your Ground’ Law: The Actual Effects and the Need for Clarification.” *University of Miami Law Review*, p. 8. 1 Oct 2012.

<sup>57</sup> Cheng Cheng and Mark Hoekstra. “Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine.” *Journal of Human Resources*, p. 3. 1 June 2013.

certainly be cautious about anything that would diminish citizens' ability to defend themselves and from harm and 80% of Floridians agree.<sup>58</sup>

By interpreting Representative Baxley's statements, he contends that yes, the application of Stand Your Ground may not be entirely on the line in all instances, but that is demonstrative of how any laws are applied in the "real world." As long as it is serving its intended purpose by allowing citizens to utilize defense when necessary and thus reduce violence and potential harm, its intended purpose is being served sufficiently enough. This is a crucial point in considering the question of whether or not Stand Your Ground is being applied in accordance with its original intention or if it is being applied in a manner irrelevant to that initial purpose. Although seeking an answer to such a question possesses informative value, one must also recognize the notion that aside from how a law is applied, is it ultimately, verdicts and holdings said and done, fulfilling its goal? Despite what cases are taken to court and how the judges rule on them in reference to self-defense, is the law working? Are citizens able to better defend themselves in threatening situations because of this law? Rep. Baxley surely thinks so.<sup>59</sup> It is just a matter of considering both the application and studying its correlation to the results of that application that provides understanding of whether the current law is effective.

*Tampa Bay Times Study (found at <http://www.tampabay.com/stand-your-ground-law/>)*

Last updated in August 2013, the Tampa Bay Times cites its study of Florida's Stand Your Ground cases as "the most comprehensive list of Stand Your Ground cases ever created."<sup>60</sup> In fact, this study includes over two hundred cases where either Stand Your Ground was a defense, a Stand Your Ground immunity hearing was held or motion was filed, or the

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<sup>58</sup> Fl. Rep. Dennis Baxley. Interview by Erica Beers. Personal interview, 27 Jan 2014.

<sup>59</sup> Ibid.

<sup>60</sup> "Florida's Stand Your Ground Law." *Tampa Bay Times*, last updated 10 Aug 2013.

circumstances supported the legislative intent of the law.<sup>61</sup> The study's webpage is extremely well-organized and navigable, as one can view cases filtered by age, race, county, or gender with the click of a mouse.<sup>62</sup> Even further are their options to zoom in on cases where there was a conviction, a ruling of justifiable force, and cases that are still pending.<sup>63</sup> The study also allows users to narrow their search by victim, the accused, and whether the case was fatal or non-fatal.<sup>64</sup>

The Tampa Bay Times pooled a fair amount of valid resources in compiling data, including official court records and documents, first-hand interviews with prosecutors and defense attorneys, and other published reports.<sup>65</sup> The research conductors even utilized drivers' licenses and police reports to gather information on each of the individuals involved in the cases.

This study found that approximately 70% of the cases in which Stand Your Ground was used involved the ultimate freedom of the accused.<sup>66</sup> Further on in the research below this statistic explains more, claiming that of over the two hundred cases cited in this study, 68%, or 113 cases, resulted in no punishment for the accused, leaving on the other hand 32%, or 52 cases in which some form of punishment was decided upon.<sup>67</sup> In separate tables, one will be able to learn the specific number of cases in which firearms were possessed by the victim or the accused, whether pursuit was involved before the ultimate confrontation, if there were any witnesses present, if any physical evidence was obtained, and many other factors.<sup>68</sup>

This study alone can provide a monumental amount of information related to Stand Your Ground and its effect on the state of Florida in all corners of the law. If one wishes to learn about

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<sup>61</sup> "Florida's Stand Your Ground Law." *Tampa Bay Times*, last updated 10 Aug 2013.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, What the Data Shows, last updated 10 Aug 2013.

<sup>67</sup> *Ibid.*, Case Outcomes, last updated 10 Aug 2013.

<sup>68</sup> *Ibid.*, Weapon Comparison and Weighing the Circumstances, last updated 10 Aug 2013.

individual cases or would rather compare and contrast based on a variety of factors, this is the website to turn to.

## Recent Cases

### *Trayvon Martin, the “Spark” of the 2013 Stand Your Ground Controversy*

For reasons right and wrong, many hear the term “Stand Your Ground” and instinctively associate it with the Trayvon Martin case, and vice versa. In fact, much of the proposed legislation regarding Stand Your Ground emerged soon after the acquittal of George Zimmerman. Additionally, organizations such as the Dream Defenders and a vast amount of Florida’s citizens became knowledgeable on Stand Your Ground because Trayvon’s case and the events that followed, such as President Obama’s “it could have been me” statement and the other well-known figures with similar outcries against the law. Although Stand Your Ground was not involved in the defense of defendant, George Zimmerman, and although no immunity hearing based on the law was heard, Stand Your Ground’s language was explained and referenced in the jury instructions immediately preceding Zimmerman’s acquittal.<sup>69</sup> These are some of the plain facts of the case, but some detail in the why’s and how’s of Stand Your Ground’s ultimate non-application to this case may provide an explanation, as well as enlighten those on the controversy which ensued directly after this case came to an unexpected close.

Some basic characteristics of this case prove not only why Stand Your Ground did not apply, but also why such an incredible amount of controversy on behalf of the public ensued. According to the Tampa Bay Times study of this case, the victim did not initiate the confrontation, the victim was unarmed, and the victim was not committing a crime that could have led to the confrontation.<sup>70</sup> These three attributes alone created a public image of Martin’s

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<sup>69</sup> “Stand Your Ground Law Needs Clarification.” Miami Herald Editorial, 13 Nov 2013.

<sup>70</sup> “Florida’s Stand Your Ground Law.” *Tampa Bay Times*, Weighing the Circumstances, last updated 10 Aug 2013.

innocence that influenced so many to consider this case and take action on it. To further aid Martin's case was the fact that Zimmerman was able to retreat from the conflict and that Zimmerman pursued Martin on his own accord.<sup>71</sup> Numerous calls to amend this legislation, as some formal bills demonstrate, spawn from the fact that in many cases, the defendant is the aggressor and/or is the only one in possession of a gun, automatically placing the victim at a disadvantage when the intent of the legislation was supposed to be giving them the advantage.

Additionally, an undeniable factor, commented on by figures such as President Obama and celebrity figures, is the role race played in the confrontation and ultimately, Martin's death. In a matter of days following Zimmerman's acquittal, President Obama publicly portrayed his thoughts on the situation, including these statements:

"You know, when Trayvon Martin was first shot, I said that this could have been my son. Another way of saying that is Trayvon Martin could have been me, 35 years ago."

"And when you think about why, in the African-American community at least, there's a lot of pain around what happened here, I think it's important to recognize that the African-American community is looking at this issue through a set of experiences and a - - and a history that -- that doesn't go away."

"There are very few African-American men in this country who haven't had the experience of being followed when they were shopping in a department store. That includes me."<sup>72</sup>

It is much easier to comprehend the national cry for justice that took place in the weeks and months following this press conference. The facts themselves already made the case high-profile, but the President of the United States making such a moving commentary placed Martin's death and Florida's Stand Your Ground law, at one of the highest levels of attention. Not only are public statements from high-ranking public figures influential in the current path of

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<sup>71</sup> "Florida's Stand Your Ground Law." *Tampa Bay Times*, Weighing the Circumstances, last updated 10 Aug 2013.

<sup>72</sup> "Transcript: President Obama Addresses Race, Profiling, and Florida Law." *CNN*, 19 July 2013.

Stand Your Ground, but amendments and proposals are in the works as well, also as a result of this case and ones similar to it.<sup>73</sup> This will be looked at more closely in the following chapters.

*Marissa Alexander, "The Warning-Shot Case"*

On August 1, 2010, Marissa Alexander claims she fired a warning shot in the presence of her husband, Rico Gray, after he attempted to strangle her over text messages that he had recently discovered in her phone.<sup>74</sup> According to Alexander, Gray confronted her, she locked herself in the bathroom, and Gray broke through the door and physically forced her onto the ground by her neck.<sup>75</sup> Alexander claims she ran into the garage to try and leave, found that the garage door wouldn't open, and decided to grab a gun and return inside the house.<sup>76</sup> Upon re-entering, Gray charged at her, threatening to kill her, in which she responded by firing what she says was a warning shot. Although no one was injured and despite her plea of self-defense in reference to Stand Your Ground, her motion for dismissal based on her circumstances was denied and after trial, Alexander was sentenced to a mandatory twenty years of prison for three counts of aggravated assault with a deadly weapon.<sup>77</sup>

In early 2013, the court ruled for a new trial for Alexander due to improper jury instructions regarding self-defense.<sup>78</sup> Aside from the formal criminal proceedings, this case has also sparked national attention, from civil rights leaders such as the NAACP to United States Rep. Corrine Brown.<sup>79</sup> Many controversial claims have been thrown around, such as Alexander's African American race playing a role in her initial Stand Your Ground denial and that the

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<sup>73</sup> Amanda McCorquodale. "Florida Senate Panel Approves 'Stand Your Ground' Revisions." *HuffPost Miami*, 9 Oct 2013.

<sup>74</sup> Chuck Hadad. "'Stand Your Ground' Denied in Domestic Violence Case." *CNN*, 3 May 2012.

<sup>75</sup> Larry Hannan. "Marissa Alexander's Sentence Could Triple in Warning Shot Case." *The Florida Times Union*, 2 March 2014.

<sup>76</sup> *Ibid.*

<sup>77</sup> Chuck Hadad. "'Stand Your Ground' Denied in Domestic Violence Case." *CNN*, 3 May 2012.

<sup>78</sup> Jason Hanna. "New Trial Ordered for Florida Woman in Warning-Shot Case." *CNN*, 27 Sept 2013.

<sup>79</sup> *Ibid.*

charges and sentencing brought against Alexander were too harsh, especially considering the alleged domestic violence history of her and her husband's relationship.<sup>80</sup>

This case is gaining much publicity and recognition as the current events are still coming. The state attorney assigned to this case, Angela Corey, will attempt to convict Alexander and increase her sentence to sixty years in the upcoming re-trial.<sup>81</sup> Representative of the 'Free Marissa Now' campaign made a statement regarding this attempted conviction: "It's unimaginable that a woman acting in self-defense, who injured no one, can be given what amounts to a life sentence. This must send chills down the spine of every woman and everyone who cares about women and every woman in an abusive relationship."<sup>82</sup>

The controversy in this case derives from Florida's '10-20-life' law, which requires "courts to impose a minimum sentence of 10 years, 20 years, or 25 years to life for certain felony convictions involving the use or attempted use of a firearm or destructive device."<sup>83</sup> In Alexander's case, it is the 'attempted use of a firearm' that has her in the position she is in today, even though she injured no one and only had the intentions of the shots to serve as a warning and to cause no harm. The prosecutors are claiming twenty years for each shot per this law, totaling sixty years, to be served consecutively, not concurrently as was ordered in Alexander's first trial. On the other hand, Alexander's defense is going to argue that the law violates the Eighth Amendment's provision against cruel and unusual punishment because if Alexander ends up convicted with sixty years, she will likely be behind bars the rest of her life.<sup>84</sup> Since the order for a re-trial, the defense is first and foremost re-trying their attempts at Stand Your Ground

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<sup>80</sup> Jason Hanna. "New Trial Ordered for Florida Woman in Warning-Shot Case." *CNN*, 27 Sept 2013.

<sup>81</sup> Larry Hannan. "Marissa Alexander's Sentence Could Triple in Warning Shot Case." *The Florida Times Union*, 2 March 2014.

<sup>82</sup> *Ibid.*

<sup>83</sup> "Florida's 10-20-Life Law." *Our Research Report*, 23 Jan 2013.

<sup>84</sup> Larry Hannan. "Marissa Alexander's Sentence Could Triple in Warning Shot Case." *The Florida Times Union*, 2 March 2014.



immunity, and that will be determined in a hearing set for May 2014. If Alexander is denied once again, the trial set for July will stay on course.

As a result of this law and the facts of Alexander's case, a legislative proposal is actually in the works with likelihood of passing that is primarily directed at altering the current Stand Your Ground law to include the warning of force and imply immunity and defense for those actions as well.<sup>85</sup> In addition, it has been noted that if Alexander is sentenced to the rest of her life in prison, there is a good possibility that this law, through this case, will be taken to the United States Supreme Court.<sup>86</sup> All of this being considered, much is left to be seen in the coming months as hopefully this case comes to a final close following her new trial, which is scheduled to begin on July 28, 2014.<sup>87</sup>

#### *Chad Oulson, Movie Theater Shooting*

Although the altercation in a Florida movie theater ultimately resulting in the death of Chad Oulson was found to not apply to Stand Your Ground, it is relevant to this analysis. When former police officer Curtis Reeves shot and killed Oulson after having popcorn thrown in his face, it is almost expected, due to the magnitude and diversity of such cases, that Reeves's attorneys would present a plea for justifiable self-defense under Stand Your Ground.<sup>88</sup> Perhaps the most important question in determining the application of Stand Your Ground to any such altercation is what makes it acceptable to use deadly force against another? What elements confirm the validity for a person to act with any degree of force in defense of themselves or

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<sup>85</sup> Larry Hannan. "Marissa Alexander's Sentence Could Triple in Warning Shot Case." *The Florida Times Union*, 2 March 2014.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> Steve Almasy and Ashley Fantz. "One Piece Still Missing From Puzzle of Fatal Movie Theater Shooting: Why?" *CNN Justice*, 14 Jan 2014.

another? In this instance, popcorn, or as Reeves's attorneys stated, "an unknown object," being thrown in Reeves's face was not enough to qualify him for Stand Your Ground immunity.<sup>89</sup>

The facts and recent events of this case assist in evaluating why Reeves is currently still in custody and charged with second degree murder, his self-defense pleas thus far irrelevant. Despite Reeves' defense team unceasingly declaring self-defense, the hearing regarding his bail on Friday, February 7, 2014 ultimately resulted in the judge ruling that he was to remain in jail until his trial.<sup>90</sup> Although an appeal will more than likely be made, this serves to show that as this case presently stands, self-defense and presumably Stand Your Ground is not in Reeves's favor. A quick analysis of the facts may shed some light on why this is so.

The series of events which provoked Reeves into confrontation with Oulson and conclusively led to Reeves shooting and killing Oulson started with Oulson texting his daughter's babysitter during the previews before the movie began.<sup>91</sup> The altercation was mostly verbal, until Oulson, according to surveillance and witness reports, turned back and threw popcorn at Reeves's face and Reeves's response was to draw his .380 semiautomatic and shoot Oulson in the chest.<sup>92</sup> Reeves claimed to officers shortly after that Oulson made him "scared for his life," but how much justification does this statement have?<sup>93</sup> Reeves made multiple recorded statements that Oulson "lunged at him," was "on top of him," and that Oulson punched him with his fist, but both wives which were present at the scene, Vivian Reeves and Nicole Oulson, stated that neither saw Oulson do any such things.<sup>94</sup> Additionally, the question of the proportion of force may have played a role in leading to the rejection of any self-defense claims. From

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<sup>89</sup> Ibid.

<sup>90</sup> Jon Silman and Lisa Buie. "Judge: No Bail for Curtis Reeves, Accused in Movie Theater Shooting." *Tampa Bay Times*, 7 Feb 2014.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

observation of the surveillance inside the theater and the consensus of witness accounts, the most physical force Oulson exerted included throwing a handful of popcorn at Reeves. The response in force involved a gun, the act of shooting two times, and the death of Chad Oulson. These facts are like puzzle pieces which in this case, do not seem to fit for Stand Your Ground or self-defense. Pre-trial is set to begin in March 2014, so the final outcome is yet to be seen.

Cases similar to these unveil the gray area of Stand Your Ground application and imply that such a law must be applied to cases in society on a case-by-case basis. Might this suggest a vagueness in the language of the law? Possibly. Until the current Stand Your Ground language is amended, or if that event even occurs at all, the most valuable tool one has in determining the receptiveness of this law is its application in the courts and cases of today.

*John Wayne Rogers, Former Marine*

When the defense counsel for John Wayne Rogers argued that their client's actions leading to the shooting and death of Rogers's friend James Dewitt were justified under Stand Your Ground, the judge complied.<sup>95</sup> After a night of drinking and 'play fighting,' Rogers asked Dewitt to leave his home, and upon refusing to do so, Rogers felt it necessary to retrieve his assault rifle. According to testimony, when Rogers requested Dewitt leave his home a second time, this time with rifle in hand, Dewitt charged Rogers, in which case Rogers became legally justified to use deadly force in this Stand Your Ground case.<sup>96</sup>

Although one may argue in favor of Rogers's actions, there are still many factors that need to be considered to better understand why Stand Your Ground applied in this case and was found applicable for others. Rogers is legally blind, which may have enhanced his argument for shooting Dewitt at such close range. Dewitt 'charged' at Rogers upon being asked to leave the

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<sup>95</sup> "Blind Former Marine Acquitted of Murder Charges in 'Stand Your Ground' Case." *Fox News*, 12 Jan 2014.

<sup>96</sup> *ibid.*

home, which invokes a more significant use of force into the altercation. While these may prove promising for Rogers and Stand Your Ground strength, there are factors present in this case that may have instead defeated Rogers's plea for immunity. For example, both men had been drinking, therefore implying that Rogers was under the influence and not of a clear mind upon shooting Dewitt. Additionally, Dewitt did not attack Rogers with a deadly weapon, while Rogers used a rifle, exceeding the 'force with force' provision. Despite these two circumstances, Stand Your Ground prevailed again and Rogers evaded multiple first-degree murder charges as ruled by a Seminole County Judge in January 2014.<sup>97</sup> Even further, on Thursday, February 20, 2014, the same judge 'grudgingly' decided to return both of Rogers's guns to him, which consisted of his 10-mm Glock pistol and his .308 caliber assault rifle, the subject weapon used in Dewitt's death.<sup>98</sup>

Why has Stand Your Ground been much more readily applied to Rogers's case and has not been accepted in Reeves's case in the Oulson movie theater shooting? In both cases, the forces exerted by the deceased did not match the deadly force used by the aggressor. Dewitt and Oulson did not have or use any deadly weapons, but Rogers and Reeves did. This is where the similarities end. Some factors which differentiate Rogers from Reeves include Rogers's blindness, his multiple warnings to Dewitt, Dewitt physically 'charging at him, and the altercation taking place in Rogers's home. It is much more difficult for Rogers to appreciate the actions taking place around him as he cannot see what is taking place right in front of him, therefore allowing more of an argument for him to take action against aggressors. Also, Dewitt 'charged' at Rogers, while Chad Oulson's "force" escalated only to the point of throwing popcorn. The fact that the Rogers-Dewitt altercation took place in Rogers's home also is

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<sup>97</sup> Lee Moran. "Blind Florida Man Who Shot Drinking Buddy Dead with Assault Rifle to Get Guns Back." *New York Daily News*, 21 Feb 2014.

<sup>98</sup> *Ibid.*

significant. This predates even Stand Your Ground and falls back on the centuries-old, widely recognized Castle Doctrine. In this sense, the home has almost always been regarded at the most sacred, with the most privacy, and is the homeowner's primary location of safety. After requesting Dewitt leave his home two times with no compliance, Rogers was found to have much more justification for acting the way he did. In Reeves's case, he fatally shot a stranger in a public venue completely occupied by innocent bystanders. The comparison between these two cases is an important one that connects Stand Your Ground to some instances and not others.

*Michael Dunn, "Loud Music Case"*

On November 23, 2012, Michael Dunn pulled into a gas station next to a Durango with four teenagers inside that was playing loud music. Dunn asked those in the Durango to turn the music down and claims that the teenagers threatened him in return. Dunn also claimed he saw the barrel of a gun sticking out of a window in the Durango and decided to shoot a total of ten bullets into the Durango, killing Jordan Davis, one of the vehicle's young occupants.<sup>99</sup> After the altercation, Dunn and his fiancée drove to a nearby bed and breakfast, and did not have any contact with the authorities until he was taken into custody. He admits that he has no idea why he did not contact the authorities following the incident.

Dunn's fiancée commented that she does not remember observing any weapons in the Durango, and subsequent to an official search and accounts, none were found.<sup>100</sup> Despite Dunn's pleas of self-defense, due to the lack of evidence that there was any weaponry in the Durango and the excessive force used considering the circumstances of the issue at hand, Stand Your Ground immunity was not granted. Instead, a jury convicted Dunn of three counts of attempted

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<sup>99</sup> Greg Botelho and Sunny Hostin. "Dunn Convicted of Attempted Murder; Hung Jury on Murder in 'Loud Music' Trial." *CNN Justice*, 16 Feb 2014.

<sup>100</sup> *Ibid.*

second degree murder on Saturday, February 15, 2014.<sup>101</sup> Although the jury was decisive on those counts, they could not come to a unanimous decision on a fourth count, that of first-degree murder as it relates to the death of Jordan Davis.<sup>102</sup> Only considering Dunn's three counts already decided upon, it is possible that he will spend the rest of his life in prison. However, appeals still need to be made and the request for a new trial is already in the works.<sup>103</sup>

Aside from the facts of this case already discussed, one not yet mentioned has sparked a great degree of interest, and that is the factor of race. Dunn, 47-years-old, is white, and the teenagers in the Durango, included deceased Jordan Davis, were all African American. Many have remarked that this case is an echo of the Trayvon Martin case, although Dunn's fate has been speculated to be less likely to result in an acquittal.<sup>104</sup> This case is one of many that are not yet said and done, but is yet another indicator of the broad spectrum of cases enveloped in defenses of self-defense and pleas of immunity under Stand Your Ground.

*Michael Holmes, Fatal Domestic Dispute*

The death of Michael Holmes on the night of June 26, 2013 following an altercation between his wife, Tyra Holmes, and himself has recently reached the top of the court's docket as the defendant, Tyra's, plea for Stand Your Ground was heard and quickly dismissed.<sup>105</sup> At the time of the incident, Tyra claims to have observed suspicious text messages in Michael's phone. Upon confronting him, he became aggressive and attempted to choke her. After running downstairs to the kitchen, Tyra grabbed a knife and went back upstairs to her son. According to

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<sup>101</sup> Ibid.

<sup>102</sup> Greg Botelho and Sunny Hostin. "Dunn Convicted of Attempted Murder; Hung Jury on Murder in 'Loud Music' Trial." *CNN Justice*, 16 Feb 2014.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Rafael Olmeda. "Judge Denies Broward Murder Suspect's Stand Your Ground Claim." *Sun Sentinel*, 14 March 2014.

Tyra, Michael ran straight into the knife she was holding out in self-defense, killing him.<sup>106</sup> The facts of this case are questionable, as are many in which the victim is deceased and there are no other witnesses. To create an even more unclear situation, Tyra has a criminal history of child neglect and there has been testimony of her involvement of a romantic affair which started before her marriage and was still continuing at the time of Michael's death.<sup>107</sup> Another component which may affect a jury in the future and will not serve Tyra's case includes her "calm and unemotional" dialogue during the 911 call. Finally, the prosecutors' argument regarding the force of the knife which would be required to fatally wound Michael has the potential to counter Tyra's mere claim of self-defense and place her in the possible realm of murder.<sup>108</sup>

Tyra's African American race may have weighed in to public speculation as it has in other cases, such as Trayvon Martin's and Marissa Alexander's, but these factors of Tyra's history have essentially trumped the majority of the influence race played in this case. Race is also not as significant of a factor because this wasn't between individuals of different races; Michael and Tyra were/are both African American, and possibly even more importantly, were married.

The judge's dismissal of Tyra's claim of Stand Your Ground is not so surprising considering these facts and other circumstances arising from this case. Due to the denial of Stand Your Ground at her hearing, Tyra must now await trial for the death of her former husband. Also worth noting is a minute aspect of Stand Your Ground, but with more than minute implications. If a defendant uses Stand Your Ground in the state of Florida, during the preliminary hearing

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<sup>106</sup> Ibid.

<sup>107</sup> Rafael Olmeda. "Judge Denies Broward Murder Suspect's Stand Your Ground Claim." *Sun Sentinel*, 14 March 2014.

<sup>108</sup> Ibid.

where they assert this claim of self-defense, it is usually necessary that they present their own testimony to support their claims. If the hearing goes unfavorably, as it did in Tyra's case, this testimony is liable to be used and referenced during trial, which it is very likely that the prosecutors in this case will do.<sup>109</sup>

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<sup>109</sup> Rafael Olmeda. "Judge Denies Broward Murder Suspect's Stand Your Ground Claim." *Sun Sentinel*, 14 March 2014.



## IV. PROPOSED LEGISLATIVE REFORM

Although it is nearly impossible to accurately foretell the future, one may make strides and inquiries which can enlighten upon well-founded predictions and possibilities. An effective way to accomplish this would be to analyze and evaluate a handful of the more monumental legislative proposals and hearings as these are the closest steps to concrete reform. The Stand Your Ground agenda of the general society may be overwhelming and strong, but it is in the Florida legislature that any final and substantial changes will be made.

### **Amendments**

Since Florida initially passed Stand Your Ground in October of 2005, there have been a series of debated proposals to the statute. These amendments have been proposed largely due to the highly controversial nature of the existing legislation that is frequently seen in the media, in the courtrooms, and in the public arena in general. It is important to analyze these proposals as they provide a suitable means of examining and predicting the path of Stand Your Ground in Florida, and potentially throughout the United States.

The diversity of the following proposals is one of the key aspects in understanding the controversy surrounding Stand Your Ground. For example, there is not a single push for the law's repeal or one force behind keeping the law as is. These proposed bills derive from a broad spectrum of advocacy, from those who want the law completely gone, to those who are satisfied with the law as a whole but seek to add modifications, and to those who fully support Stand Your Ground notions and wish to expand its reach. This factor of perspective differentiation also plays a role in any of these proposals actually passing through both houses and the hands of the governor. If so many different parties have separate interests in Stand Your Ground, the same could be implied in the very houses these bills are being debated in. It would appear difficult,

especially from noticing that none of these have yet to be successful, for a bill representing only one group's perspective of Stand Your Ground to pass through bodies with multiple perspectives.

### *SB 622*

Drafted and submitted by Florida Senator Dwight Bullard, Senate Bill 622 was first filed in the Florida legislature in February of 2013 and failed in the Criminal Justice Committee in May of 2013.<sup>110</sup>

In this amendment, Senator Bullard proposed a repeal of the entire Florida Statute §776.013, essentially the heart of Stand Your Ground.<sup>111</sup> If this bill had passed, Stand Your Ground and the use of deadly force would only be justified if a person reasonably believed this force was the *only* option to prevent great bodily harm or death. Any other instance that does not fit this criteria would require persons to retreat to the greatest possible length before engaging in confrontation and imposing force on the aggressor. Perhaps its extreme implications were too much of a retraction from the original Stand Your Ground language for it to be better received. As will be observed from more recent bills and proposals, smaller steps and changes have seemed to go farther and have more legislative potential for success.

### *CS/SB 122 & 130*

Although Senate Bill 622 didn't make it too far, the committee substitute (CS) of the combination of Senate Bills (SB) 122 and 130, collaborated on by the Judiciary Committee, Senator Christopher Smith, and Senator Simmons may very well have a more promising likelihood of success, and is showing signs of passage during this first half of 2014. Senate Bill 122 was originally filed in August 2013 and the final result of this bill and its counterparts has

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<sup>110</sup> Sen. Dwight Bullard. "SB 622: Use of Deadly Force in Defense of a Person." *The Florida Senate; Bill History* (2013).

<sup>111</sup> Fla. SB 0622 (1): Use of Deadly Force in Defense of a Person (2014).

been molded into SB 130.<sup>112</sup> On October 14, 2013, this bill was still in review by the Criminal Justice Committee, but was later voted to merge to create one proposal.<sup>113</sup> CS/SB 122 and 130 is remarkable as it attempts to retract, expand, and alter almost every section of the Stand Your Ground statute and even some other statutes that are subject-related as well.<sup>114</sup>

The first part of this proposal regards an amendment to Florida Statutes §30.60 and §166.0485, both of which regard the newly granted authority of county sheriffs or municipal police departments to establish neighborhood crime watch programs and the associated guidelines for doing so.<sup>115</sup> This section also calls for the Department of Law Enforcement to “develop a uniform training curriculum for training neighborhood watch participants” in those same neighborhood programs and for those activities and procedures that must be included in this curriculum.<sup>116</sup>

Additionally, this bill narrows the circumstances under which a person is criminally or civilly immune from prosecution from the use of force. Under this amendment, one would only be immune from criminal prosecution and civil action “by the person, personal representative, or heirs of the person, against whom force was used.” This implies that any third party affected by such force or even the state is not susceptible to this barricade of immunity when seeking legal action. Also, the definition of criminal prosecution as it includes arresting and detaining in custody is deleted and replaced with “probable cause, arresting, taking into custody, or charging and prosecuting the defendant.” This proposal’s success also would allow a law enforcement officer to employ a “right and duty to fully and completely investigate the use of force upon which an immunity may be claimed or any event surrounding the use of such force.” This single

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<sup>112</sup> Sen. Christopher Smith. “SB 122: Self-Defense.” *The Florida Senate; Bill History* (2014).

<sup>113</sup> *Ibid.*

<sup>114</sup> Fla. CS/SB 0130: Use of Deadly Force (2014).

<sup>115</sup> Fla. CS/SB 0130 (1)(2): Use of Deadly Force (2014).

<sup>116</sup> *Ibid.*

aspect would certainly increase the accountability rate for individuals that used force and grants more authority law enforcement has in self-defense cases.

In regards to the use of force by the aggressor, as detailed in Florida Statute §776.041, a simple, but potentially complicated addition is made in that “The justification described in the preceding sections of this chapter, including, but not limited to, the immunity provided for in s. 776.032, is not available to...” and then proceeds with the original legislation’s criterion.

It doesn’t take much investigation to discover that this bill spawned out of the acquittal of George Zimmerman and the fatal shooting of Trayvon Martin. According to editor Amanda McCorquodale, “the changes approved Tuesday are a clear response to the George Zimmerman case.”<sup>117</sup> The facts of this case are clearly mirrored in the new bill. Zimmerman was a member of a neighborhood crime watch program, who pursued and confronted the young Trayvon Martin. It is no coincidence that a significant provision of the bill calls for the establishment of neighborhood crime watch guidelines which provide “that participants are prohibited from pursuing and confronting suspects.”<sup>118</sup>

This brief description of the proposal sufficiently demonstrates the degree to which change is being called upon in Florida for Stand Your Ground legislation. It is also quite recognizable that part of this amendment, here the implementation of regulated and trained neighborhood watch programs, was at least in part influenced by the Trayvon Martin verdict through defendant George Zimmerman’s role in his neighborhood watch organization. Regardless of whatever sparked this proposed legislation, its progression through the Florida legislature and current position under the committee’s review exhibits its potential for passage in the near future.

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<sup>117</sup> Amanda McCorquodale. “Florida Senate Panel Approves ‘Stand Your Ground’ Revisions.” *HuffPost Miami*, 9 Oct 2013.

<sup>118</sup> *Ibid.*

In fact, on March 17, 2014, SB 130 glided through the Senate Criminal Justice Committee with unanimous approval.<sup>119</sup> This is notable not only is the complete lack of opposition, but also because of the unique bipartisan cohesiveness. If anything is a stable indicator of the progress of change your ground as it stands today, this bill is it. The Republicans support it. The Democrats support it. The Republicans support it. The original sponsors of the bill and lead figures in the NRA support it.<sup>120</sup> Key aspects of this proposal were inspired by Florida Governor Rick Scott's Task Force on Citizen Safety and Protection, which translates that the state's executive branch supports it.<sup>121</sup> These statements do not include the Florida legislature as a whole, but when every single members of the Florida Senate Criminal Justice Committee, significant in both influence and innovation, votes 'yay,' that undoubtedly is a signal for change.

The importance of the call for change in Stand Your Ground is seriously reflected in Senate Minority Leader Chris Smith's comments on March 17<sup>th</sup>, "People on this committee and those that were here to vote for [the original law] ... are constantly saying, 'It's not what we intended, It's not what we intended, It's not what we intended.' Well, we have about 50 days now to say what we intended."<sup>122</sup> This proposal and the legislative events surrounding it readily exhibit that Stand Your Ground's forecast is likely to take some turns this year, considering not only statements such as those by Senator Smith, but additionally the clarifications that have been made regarding the misconstrued intent of the law, admitted to by those including the law's original sponsors.<sup>123</sup>

### *October 8<sup>th</sup> Amendment Hearing*

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<sup>119</sup> Margie Menzel. "Senate Panel Backs Bipartisan Tweak to 'Stand Your Ground.'" *CBS Miami*, 17 March 2014.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

On Tuesday, October 8, 2013, a panel from the Florida Senate Judiciary Committee amended the Stand Your Ground law for the first time since its original enactment in October of 2005 eight years earlier.<sup>124</sup> With a final vote of seven in favor and two opposed, some significant changes were made. These changes were spurred from suggestions spelled out in what is now labelled “CS/SB 130: Use of Deadly Force,” that was previously explained. From this bill, the issuance of guidelines to local neighborhood watch organizations was approved, specifically emphasizing that these guidelines include provisions against pursuit and provocation of confrontation on behalf of these neighborhood watch members.<sup>125</sup> Additionally, other approvals stipulate that aggressors in situations in which Stand Your Ground would normally apply would not be seen as justified in using force by their role as aggressor.<sup>126</sup> Also important is the ability of third parties and bystanders to pursue legal action, as opposed to the initial language which involved complete immunity from any and all parties.<sup>127</sup>

#### *November 7<sup>th</sup> Repeal Hearing*

On Thursday, November 7, 2013, the Florida House of Representatives committee held a hearing to decide yay or nay on a repeal of the Stand Your Ground law in its entirety.<sup>128</sup> This hearing was agreed-upon after over a month of protests in the summer of 2013 at the Florida capitol following the acquittal of George Zimmerman.<sup>129</sup> The repeal was ultimately defeated in an 11-2 vote, but not before representatives and others had the opportunity to put forth their own perspectives on the law and the results that they believe are changing the state of Florida.

Representative Irv Slosberg stood at the forefront of those who called for the repeal and

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<sup>124</sup> Amanda McCorquodale “Florida Senate Panel Approves Stand Your Ground Revisions.” *Huffington Post*, 9 Oct 2013.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> “Stand Your Ground Law Survives Florida House Vote.” *Fox News*, 8 Nov 2013.

<sup>129</sup> *Ibid.*

made his mark on the hearing with these words: "How can an unarmed citizen defend themselves against an armed lunatic with a delusional sense of danger? Stand your ground creates a mentality of destruction and fear while reinforcing a society of violence and aggression."<sup>130</sup> At the other end of the spectrum, Marion Hammer from the NRA stood firm in her belief that a "duty to retreat signals the justice system places more value on the life of a criminal than the life of a victim."<sup>131</sup>

In addition to the presence of the NRA and notable representatives, relatives of victims in Stand Your Ground altercations provided their perspectives, testimony, and accounts that added an emotional appeal into the atmosphere of this formal proceeding.<sup>132</sup> The mother of Trayvon Martin, Sybrina Fulton, has given handfuls of remarks at public events since her son's case, such as these: "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."<sup>133</sup> Despite the loss of efforts to repeal Stand Your Ground as a whole, CS/SB 130 still remains a bill in the Senate that holds the potential to significantly amend the standing legislation.

Despite these hearings and proposals that have run their course through the Florida legislature with no significant success, there is currently a fresh round of bills actively fighting for support and their shot at passing through both houses and the hands of the governor in efforts to amend Stand Your Ground. As this statute incites much complexity and a diversity of opinion, it is likely that there will be many more changes to come following this analysis. However, the

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<sup>130</sup> "Stand Your Ground Law Survives Florida House Vote." *Fox News*, 8 Nov 2013.

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> "'Stand Your Ground' Repeal Voted Down by Fla. House Committee." *CBS News*, 8 Nov 2013.

most recent bills still alive and well on the docket will provide a better understanding of the current state of this law. The more current these bills are, the more information that exists to base a hypothesis on the future and direction of Stand Your Ground.

*CS/HB 89, "Threatened Use of Force Act"*

This bill entitled 'Threatened Use of Force' can be quite simply perceived by its title alone. As can be swiftly observed through the language, the synopsis of this bill regards the mere addition of the threat of force to apply in the same context as the actual use of force throughout Florida statutes 776.<sup>134</sup> The director of Families Against Mandatory Minimums (FAMM) in Florida, Greg Newburn, provided a brief explanation of this bill, "The point is to prevent prosecution of people who use firearms in self-defense, but don't actually shoot or kill an attacker."<sup>135</sup> For instance, if an individual were to merely threaten the use of force, such as firing a warning shot, as opposed to actually engaging in forceful action, they, too, would fall under the immunity and justifiable categories.<sup>136</sup>

One analysis of this bill might find that this proposal has two effects, the first being that it expands the permissible actions already encapsulated in the Stand Your Ground wording. Another interpretation of CS/HB 89 may demonstrate a possible effort to encourage less force and violent action by allowing individuals to threaten the use of force in lieu of actually carrying out the use of force. This second effect has some probability, but the first effect is the one being discussed and shared through most of the popular discussion in Florida. The implications of this bill would expand the already seemingly limitless bounds and circumstances of what constitutes justifiable force during self-defense.<sup>137</sup> Also important is the Threatened Use of Force bill's

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<sup>134</sup> Fla. CS/HB 89: Threatened Use of Force (2014).

<sup>135</sup> Mike Riggs. "Florida Might Revamp the State's Stand Your Ground Law." *The Atlantic Cities*, 14 Jan 2014.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*



relevance to the previously-mentioned Marissa Alexander case, who was found guilty and sentenced under charges relating to an incident in which she fired a warning shot in self-defense of her husband during a domestic violence incident.<sup>138</sup>

On January 14, 2014, the Florida Senate's Criminal Justice Committee approved this amendment in a 5-0 vote.<sup>139</sup> As of January 16, 2014, this bill was moved into the House Judiciary Committee, so it remains to be seen what the results of such a change would be.<sup>140</sup> Since the original House bill was filed in September of 2013, it has been sent around to almost ten different committees/subcommittees, so its enduring might prove promising.<sup>141</sup>

#### *HB 293/SB 270*

The aim of these bills is quite clear. Through setting limitations on when one may meet force with force and in what instances immunity for Stand Your Ground may not apply, these proposals jointly seek to reduce the scope of the justifiable use of force. More specifically, the language includes that a person may engage in a degree of force when an "attacker commits an overt act that leads [the] person who is attacked to believe that it is necessary to meet force with force."<sup>142</sup> Additionally, the language determines that an individual does not qualify for immunity if the "person injures [a] child or bystander who is not affiliated with [the] overt act."<sup>143</sup> Although this bill was only filed recently in November of 2013, it is still in the Criminal Justice Subcommittee and has been since mid-December of 2013. If either of these bills, or their substitute, is passed, Stand Your Ground will undoubtedly take a step back.

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<sup>138</sup> Mike Riggs. "Florida Might Revamp the State's Stand Your Ground Law." *The Atlantic Cities*, 14 Jan 2014.

<sup>139</sup> *Ibid.*

<sup>140</sup> "CS/HB 89: Threatened Use of Force." *Florida House of Representatives*.

<sup>141</sup> *Ibid.*

<sup>142</sup> "HB 293: Deadly Use of Force." *Florida House of Representatives*.

<sup>143</sup> *Ibid.*

Each of these bills, both individually and collectively, whether accepted or thrown out, points to a conclusion that the last word for Stand Your Ground has not yet been said. If cases such as Trayvon Martin's keep occurring, or cases even close in descriptor and circumstances, it is hard to believe the law will survive at all. The process begins with the application of the law in the cases that come before the court. Following that is the reaction to the holding regarding the law on behalf of society, and their consensus is subsequently pressured into the hands of the legislators, who take these impressions with them into their respective house, which is where all of this reform is decided upon. The way things stand now, there are still many, many cases flowing through Florida's judicial system and there is still a great amount of reform being drafted, publicized, and discussed, which reflects the idea that the cycle of reform is indeed still flowing and not at a halt yet, leaving the status of Stand Your Ground in the gray.

In the words of Rep. Dennis Baxley,

"Nothing is ever final in the legislature. Discussions and debates will continue. The controversy is more a media event and a clash of different views about self-defense and what assurances we will provide to our citizens. The current debate has brought the law under careful scrutiny, and it has stood up to their review. I would not expect substantive changes in the near future. This law was passed with bi-partisan support, unanimous vote in the Florida Senate, only 20 votes contrary in the Florida House (120 members). That is not a controversial vote."<sup>144</sup>

These statements from Rep. Baxley do demonstrate his opinion on the strength of Stand Your Ground, but more importantly, they imply the likelihood that there remains more to come in this law's future. With a handful of proposals still active in the Florida legislature, not even including ones that have already gone through the process, there is much left to be said about reform. A significant number of senators and representatives are attempting to expand, reduce, or simply

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<sup>144</sup> Fl. Rep. Dennis Baxley. Interview by Erica Beers. Personal interview, 27 Jan 2014.

maintain the stability of Stand Your Ground and are putting forth full efforts into this law. Although Stand Your Ground has some influential and wealthy supporters behind it, the strong forces pushing for reform from all angles show that at least some compromising alterations might be a possibility in the near future.

*March 10, 2014 March at Tallahassee*

On Monday, March 10, 2014, a march protesting Stand Your Ground in Florida is scheduled to occur in Tallahassee. It is intended to begin at the Civic Center and end at the state capitol, where a rally will be held to support the repeal of this law.<sup>145</sup> Notable individuals such as the family members of Trayvon Martin, Jordan Davis, and Emmett Till are participating, as well as the Reverend Al Sharpton, who will be leading the march, and members of the NAACP and the National Action Network.<sup>146</sup> The aim of these events is not solely to result in the repeal of Stand Your Ground in the state of Florida. Rather, the hope is that a repeal of the law in Florida would have a similar chain reaction on other states in the U.S. who have the same laws. According to Sharpton, leader of the march, “Florida was the first state to have (such) a law, signed by Gov. Jeb Bush in 2005, and it spread out to over 20 states...So now we must repeal it in Florida to change it all over the country.”<sup>147</sup>

This march is only one in the expected turnout of Stand Your Ground activism during 2014. The NAACP has already begun hosting their opposition to Stand Your Ground in a rally early this March, followed by more Dream Defenders’ protests in Tallahassee early this March.<sup>148</sup> There is surely more to come. In addition, on Monday, March 10, following the march and rally, there will be a Senate Criminal Justice Committee session, in which family members

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<sup>145</sup> Jeff Burlew. “Sharpton, Joyner to Lead Stand Your Ground Protest Monday.” *Tallahassee.com*, 6 March 2014.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

of Stand Your Ground victims have been invited to attend and speak during.<sup>149</sup> There is cooperation in the works between sponsors of the law and others to attempt to make alterations to Stand Your Ground.<sup>150</sup> These events are only a few that fall under the list of Stand Your Ground proposals and reform. There is surely more to come.

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<sup>149</sup> Jeff Burlew. "Sharpton, Joyner to Lead Stand Your Ground Protest Monday." *Tallahassee.com*, 6 March 2014.

<sup>150</sup> *Ibid.*

## V. CONCLUSION

### *Direction for Reform*

The purpose of this analysis was not to endorse any position on the legal or moral foundations of Stand Your Ground. Rather, the intention has been to provide detailed and accurate information on the law itself, how it has been interpreted, and the varied reactions that have come into play since its application. By delving into these aspects and focusing on the facts, instead of any biased implications, the future direction of the law, whether that involves a repeal, reform, or nothing at all, may be better understood and anticipated.

The heavy and subjective viewpoints surrounding Stand Your Ground demonstrate the evident lack of cohesiveness on the issue and may suggest that some reform may be necessary in the near future. Although Stand Your Ground has been accepted in several states through both the legislature and the general society, its implementation has been by no means unanimous. With so much controversy over a single law that has been a part of Florida's legal system since 2005, it would seem that a change in the language may level out the platforms and quell much of the controversy. When considering any political issues, it is inevitable and quite expected that there will be those in favor those in opposition, and of course this must be taken into consideration when it comes to Stand Your Ground. However, the question remains as to when is the optimal time to take action. In other words, when is the line crossed from mere civil disagreement to an seemingly unceasing controversy which serves as a source of preventing unity on behalf of society's members and leaders?

The implication for reform is not arising out of the position that Stand Your Ground as a whole or even by its parts is wrong or flawed. A law can have the highest moral and legal caliber

and it still would be likely that it would not be applied on a completely equal threshold. However, this does not mean to settle on that version of that law. With the constantly changing political climate and the strong demand for re-evaluation of Stand Your Ground, which has been presenting itself persistently through court verdicts and in the media, proposing alternatives or striving for a mutually-desirable middle ground may provide some resolution. A compromise may be found to serve the common good in this case.

*Where does that leave us?*

The future of Stand Your Ground is hanging in the balance, and the current controversial cases and slew of bills from both parties does not make it any clearer. The Tampa Bay Times Study, and numerous others, have shown that this law has resulted in a gray line of application on a case-by-case basis, a series of mixed and passionate reactions from the public, and a variety of proposals on behalf of Florida's legislature. For these reasons, among others, it would be a highly difficult task to determine what the status of Stand Your Ground will be in a year, in five years, or even longer.

However, it is possible, as has been the structure of this paper to argue, that whatever the future of Stand Your Ground unravels to be can at least in part be better anticipated through an analysis of its current and historical states. By analyzing where Stand Your Ground came from, how it is structured, and how it has impacted mainly Florida's, but also the nation's, society and legal system, one will not wander blindly in the search for this law's future. With founded knowledge of this law and its consequences, justified predictions can be contemplated and considered.

Stand Your Ground has been a part of Florida for less than ten years. Since that time, it has influenced similar laws in dozens of states and has created a significant nationwide trend.

Florida has revolutionized the traditional Castle Doctrine by opening the door for self-defense to be justifiably exercised in any and all locations where the threat of bodily harm is present. Venturing even further, this law allows for not only the use of force, but of deadly force, and also contains implanted provisions where, providing Stand Your Ground claims such force as justified, no civil or criminal consequences will follow for the use of such force. These radical implications have become more well-known and have incited a great degree of scrutiny of the law itself as the cases in which Stand Your Ground has been applied have demonstrated staggering results. The reaction from the public and the media have contributed immensely to the uncertain state Stand Your Ground currently is in.

What remains to be seen is how the foundations of Stand Your Ground will play out over the long-term, especially since the acquittal and strong public reaction over the Trayvon Martin killing occurred. Although a substantial amount of finances through a handful of organizations supports the backbone of Stand Your Ground, the emerging proposals, public statements, and calls for change are threatening the original version of the law. The next year or two will really unveil the future of Stand Your Ground once it becomes clearer if the legislative proposals will keep coming, if any amendments are passed, and if public sentiments towards this law change at all. There are many factors that can steer the direction in one way or another.

The largest portion of protests, proposals, and publicity for Stand Your Ground since its passing has been since the summer of 2013 when George Zimmerman acquittal. Unfortunately, as this took place less than one year ago, it is only that much more difficult to determine if Stand Your Ground will be amended. The next few years will show if any of the existing or developing proposals actually pass, if public sentiment over controversial cases dies down, and if any other game-changing cases or legislation takes place. This could simply pan out to be a phase, where

society gradually moves past controversial verdicts and representatives fail to come up with any majority proposals. On the other hand, the protests and hearings could continue until the change demanded becomes reality. Presently, this is all unknown, but the next few years will tell much more.

Stand Your Ground garnered a new wave in the state of Florida and in the United States, but will it be short-lived? Only time will tell.



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