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Testimony of Kelsey Rogers, Senior Manager, State Policy, Brady  
Opposition to H.B. 796, Expansion of “No Duty to Retreat” law  
Before the Ohio House of Representatives Civil Justice Committee  
December 8th, 2020

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and Members of the Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America’s gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah’s legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

There are evidence-based policy solutions that we know will address the gun violence epidemic in the state of Ohio. In the past five years alone, 8,565 Ohioans have been killed by gun violence,<sup>1</sup> and that number will continue to climb. The answer to the violent epidemic of gun violence is not the enactment of another law that would endanger public safety. **We strongly urge the committee to oppose H.B. 796 because it is an ineffective and dangerous law that threatens the lives of all Ohioans and perpetuates racial inequalities in the gun violence epidemic.**

**What Would H.B. 796 Do?**

H.B. 796 would, at its core, remove any requirement for an individual to attempt to leave a threatening situation before using lethal force. The “castle doctrine,” under which an individual has no duty to retreat *if they are in their own home or vehicle*, is already law in Ohio.<sup>2</sup> Importantly, Ohio law currently requires an individual to attempt to retreat to safety if they are in a public location - something that all reasonable people recognize as prudent to prevent lethal force or violence in public spaces. If passed, H.B. 796 would allow a troubling and dangerous expansion of centuries of precedent interpreted by the Supreme Court and state courts, that requires individuals to peacefully retreat from a dangerous situation when possible, rather than defaulting to violence. While Brady recognizes that every individual has the right of

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<sup>1</sup> For the past 5 years which data is available (2013-2018), according to CDC’s WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>.

<sup>2</sup> Laura Bischoff, “Could Ohio’s New Self-Defense Law Impact Case of Homeowner Killing Teens in Garage?” Dayton Daily News, Sept. 5, 2019, <https://www.daytondailynews.com/news/crime--law/could-ohio-new-self-defense-law-impact-case-homeowner-killing-teens-garage/dbU65o2yt6tbQQvCSnoVYI/>.

self-defense and to feel safe wherever they are, we also recognize that Ohio already protects individuals in danger when they must resort to lethal force in a variety of scenarios. The erosion of one's duty to retreat inherently threatens public safety as it has already in states with similar policies and will put Ohioan lives at risk if signed into law.

### **H.B. 796 would be an Unnecessary and Overly Broad Expansion of Self-Defense Law**

While all 50 states recognize a basic human right to self-defense and consider it a “justification” to criminal action, this right is far from unlimited. At its core, self-defense relies on a two-prong evaluation: that 1) the force used is reasonable and strictly necessary to protect against an imminent threat, and 2) the force used is proportionate to the perceived threat, which, in the case of use of lethal force means a threat of death or serious injury. And with this standard comes a “duty to retreat” where possible before using lethal force.<sup>3</sup>

This law would completely dismantle these standards by asserting that there is no duty to retreat and by actually allowing individuals to engage in active pursuit. At the crux of these laws, known broadly as “Stand Your Ground” (SYG) laws, lies the belief that someone who feels threatened has no duty to even attempt to remove themselves from that situation before employing deadly, violent force towards another person **anywhere, and at any time**. This system relies on a “shoot first, ask questions later” model that can quickly turn a misunderstanding or minor altercation into a crime scene. SYG laws undermine the existing sensible guidelines and social contract that help society to function in a civilized, safe manner. If every time a modicum of threat was posed, everyone immediately resorted to a gunfight, our society would be neither civilized, nor safe.

Unfortunately, this reality becomes closer and closer with the passage of each SYG law. In one case, a 21-year-old Louisiana man fired into a car of teenagers after an alleged drug deal went sour. The man claimed that he felt threatened, despite the fact that the car was pulling away when he shot into it, killing a 15-year-old inside.<sup>4</sup> Disputes over parking spots.<sup>5</sup> A Black teenager walking home from a convenience store.<sup>6</sup> A near-car accident.<sup>7</sup> A Black man out for a jog.<sup>8</sup> All escalated to lethal shootings. The mere existence of these laws gives credence and legitimacy to vigilantes who believe they have a legal right and even authority under SYG statutes to pursue individuals who they deem to be “out of place” or “suspicious.”

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<sup>3</sup> Amnesty International, In the Line of Fire: Human Rights and the US Gun Violence Crisis, 163-165, [https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full\\_16.pdf](https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf).

<sup>4</sup> Suevon Lee, “Five ‘Stand Your Ground’ Cases You Should Know About,” ProPublica, June 8, 2012, <https://www.propublica.org/article/five-stand-your-ground-cases-you-should-know-about>.

<sup>5</sup> Adeel Hassan and Nicholas Bogel-Burroughs, “‘Stand Your Ground’ Case in Florida Ends with Manslaughter Verdict,” The New York Times, Aug. 24, 2019, <https://www.nytimes.com/2019/08/24/us/michael-drejka-stand-your-ground.html>.

<sup>6</sup> “Trayvon Martin Shooting Fast Facts,” CNN Editorial Research, updated Feb. 16, 2020, <https://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html>.

<sup>7</sup> Leah Caldwell, “‘Go Back to Islam:’ When Hatred Collides with Texas’ Stand Your Ground Law, The Result is Fatal,” Texas Observer, Jan. 4, 2016, <https://www.texasobserver.org/stand-your-ground-islam-shooting-houston/>.

<sup>8</sup> Janelle Griffith, “Ahmaud Arbery Shooting: A Timeline of the Case,” NBC News, May 11, 2020, <https://www.nbcnews.com/news/us-news/ahmaud-arbery-shooting-timeline-case-n1204306>.

In an overwhelming number of cases, these stories could have had a very different ending. In fact, according to an analysis of over 200 SYG cases in Florida from 2005 through mid-2012, 79 percent of the perpetrators could have retreated - and in 68 percent of the cases, the victim was unarmed.<sup>9</sup> Protections for those under threat can be maintained without legalizing a world where an individual is free to use lethal force at the first moment of perceived threat, instead of saving it as a last resort.

### **Stand Your Ground Laws Threaten Public Safety and Increase Firearms Homicide**

In a country that strives to protect each person equally under the law, SYG statutes exempt assailants who claim self-defense from the same judicial procedure that would apply to anyone else for taking another human life in different circumstances. The dangers of unequal and mis-application are rife.

While the first Stand Your Ground law was not passed until 2005, the data that we have about the laws in early states like Florida are deeply troubling. Florida's law caused a dramatic spike in both firearms-related homicide and overall state-wide homicide numbers - increasing the former by 32 percent and the latter by 25 percent.<sup>10</sup> The effects, however, are not limited to Florida alone. As other states followed suit and passed similar laws, the negative repercussions followed, as well. Two nation-wide studies demonstrated that not only did SYG laws not make Americans safer, it did the exact opposite: it raised rates of violence across the country. A Wall Street Journal study analyzing data in the first decade of the millennium found that "justifiable homicides" increased a whopping 85 percent in that ten year period, despite all other homicides actually declining.<sup>11</sup> A Texas A&M study analyzing the same timeframe showed that SYG laws weren't associated with lower rates of violent crime but *were* linked to an 8 percent increase in homicide rates in states that had newly adopted SYG statutes.

### **Stand Your Ground Laws Are Applied Unequally, Furthering Racial Inequities in Criminal Justice and Gun Violence in America**

Stand Your Ground laws today exist within the broader context of the history of racism in the United States that has, and continues to, result in the death, injury, and dehumanization of Black people. The deep systemic and institutional racism that results in disproportionate rates of shootings and homicides in communities of color<sup>12</sup> are dramatically worsened by Stand Your Ground laws, which are applied "unpredictabl[y] and uneven[ly] and result[] in racial disparities."<sup>13</sup>

This premise - that Stand Your Ground laws will be applied unequally, especially on account of race - is borne out by the available data on the relationship between the victim and assailant. One study shows that

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<sup>9</sup> Robert J. Spitzer, "Stand Your Ground Makes No Sense," The New York Times, May 4, 2015, <https://www.nytimes.com/2015/05/04/opinion/stand-your-ground-makes-no-sense.html>.

<sup>10</sup> David K. Humphreys, Antonio Gasparrini, Douglas J. Wiebe, "Evaluating the Impact of Florida's 'Stand Your Ground' Self-Defense Law on Homicide and Suicide by Firearm: An Interrupted Time Series Study," JAMA Network, January 2017, <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2582988>.

<sup>11</sup> Joe Palazzolo and Rob Barry, "More Killings Called Self-Defense," The Wall Street Journal, Apr. 2, 2012, <https://www.wsj.com/articles/SB10001424052702303404704577311873214574462>.

<sup>12</sup> Black Americans are 10 times more likely than white Americans to die by gun homicide, and 14 times more likely than white Americans to be injured in a gun assault. For the past 5 years which data is available (2013-2017), according to CDC's WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>.

<sup>13</sup> American Bar Association: National Task Force on Stand Your Ground Laws, Report and Recommendations, Sept. 2015, <https://www.issuelab.org/resources/22713/22713.pdf>.

when a Black victim is murdered by a white shooter, that shooting is far more likely to be deemed justified under a SYG law.<sup>14</sup> In this study, the authors found that the odds of a homicide where a white perpetrator killed a Black victim being deemed justified under a SYG statute is 281 percent greater than the odds of a white perpetrator killing a white victim being deemed justified.<sup>15</sup> As a direct contrast, a shooting involving a Black perpetrator that injured or killed a white individual has barely half the odds of being ruled justifiable, relative to situations involving both a white perpetrator and victim.<sup>16</sup> A similarly disturbing study broke down the racial bias inherent in SYG laws into a simpler form: they found that, no matter the race of the perpetrator, they were two times more likely to be convicted in a case involving white victims when comparing to those with a non-white victim.<sup>17</sup>

These studies, taken together, clearly paint a picture of how the race of not just the perpetrator, but also the victim, is directly relevant to the outcome of the case, and whether the shooting is deemed justified. The authors of a study examining the racial bias of Florida's SYG law stated that "SYG legislation in Florida has a quantifiable racial bias that reveals a leniency in convictions if the victim is non-White, which provides evidence towards unequal treatment under the law." The bottom line is that SYG laws enable white Americans to kill their Black neighbors with impunity, thus only worsening the gun violence crisis for communities of color in the United States.

### **Conclusion**

We at Brady encourage the Ohio House of Representatives Civil Justice Committee to evaluate and examine bipartisan and common-sense solutions to gun violence in Ohio. **We respectfully urge that this committee vote no on H.B. 796** for the reasons listed above. Ultimately, a bill to remove the duty to retreat will not make Ohioans safer, and will instead put all Ohioans at risk by enabling an individual to shoot first without asking questions or considering the life at the other end of their firearm. By eliminating the need to de-escalate or retreat from a potentially dangerous situation, these "Stand Your Ground" laws lead to higher rates of firearms homicide and can turn a simple understanding into a deadly altercation. Brady looks forward to working with the committee in the legislative process to combat the levels of gun violence Ohioans are experiencing daily in communities of all different shapes and sizes throughout the state.

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<sup>14</sup> John K. Roman, "Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data," The Urban Institute, July 2013, <https://www.urban.org/sites/default/files/publication/23856/412873-Race-Justifiable-Homicide-and-Stand-Your-Ground-Laws.PDF>.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Nicole Ackermann, Melody S. Goodman, Keon Gilbert, Cassandra Arroyo-Johnson, Marcello Pagano, "Race, Law, and Health: Examination of 'Stand Your Ground' and Defendant Convictions in Florida," *Social Science & Medicine* Vol. 142, p. 194-201, October 2015, <https://www.sciencedirect.com/science/article/abs/pii/S0277953615300642>.