Testimony on Senate Bill 383
Senate Government Oversight and Reform Committee
Sen. Bill Coley, Chair

Submitted by:
Randolph Roth
Professor of History and Sociology, The Ohio State University

Chair Coley and members of the committee, thank you for allowing me to submit this testimony in opposition to Senate Bill 383. My name is Randolph Roth and I am Professor of History and Sociology at The Ohio State University. I am also a life-long Scouter, former Philmont Ranger, and active member of the Philmont Staff Association, who has helped Scouts learn to use black-powder muskets, rifles, shotguns, and cross-bows safely, and whose son and nephew (both Eagle Scouts) earned their archery, rifle, and shotgun merit badges. I study the history of violent crime and violent death in the United States, from colonial times to the present; and I served as a criminologist on the recent National Academy of Sciences Roundtable on Crime Trends over the past thirty years. The research that my colleagues and I have done as social scientists and historians on firearms is clear: guns are not the fundamental reason why America is by far the most violent affluent society in the world. We even beat our children to death at the highest rate. But the fact that so many Americans own and carry guns (particularly modern handguns) has made violence in this country worse than it would otherwise be. We need to establish a better balance between rights and responsibilities when it comes to firearms. Sensible regulations on firearms ownership, carrying, storage, and technology would make our society less violent, even if it would not eliminate violence altogether.[1]

When it comes to so-called "no duty to retreat laws" like SB 383, our research is clear as well. These laws have always caused deaths—a lot of deaths. There is no way to sugar-coat that. These laws—and the inability of so many American men to walk away from a fight or an

argument, even when it would be easy to do so—have killed a lot of people needlessly since the nineteenth century, when such "laws" first appeared, by way of rulings by jurors and state Supreme Courts. These laws changed both the character of fights and the attitudes of the criminal justice system toward such fights.[2] Consider this: if you look at support for these laws today, and opposition to any type of gun regulation, they can be traced directly to the proportion of a county's population that was held in slavery in 1860.[3] These laws, simply put, are one of the deadly legacies of slavery and its toxic effect on our entire nation, which continues to this day.

David Humphreys and his colleagues proved, in an article published in the *Journal of the American Medical Association*, that Florida's passage of a "no duty to retreat" law led immediately to a substantial increase in homicides in that state.[4] These homicides can be tied directly to the passage of the law, because the law sanctioned—as such laws and court rulings have since the nineteenth century—the pre-emptive use of force in confrontations that could have either de-escalated or been completely avoided when one person—the one who later swears that he was afraid and thus justified in killing—just walks away.[5]

The causes of these so-called "no duty to retreat" disputes are the stuff of everyday life: a dispute over a dog, a jostle in a bar, a rivalry over a woman, an insult, a battle over a parking place, or a traffic accident. But the fundamental issue in all such disputes—and the main reason they become violent—is that in each, one man's ability to dominate another rather than be dominated is at stake. This runs right back to slavery. Whites everywhere were unwilling to back down in any confrontation with a person of color, enslaved or free. To back down would not only threaten a white man's reputation and subject him to public scorn—it would threaten white supremacy.

The will to dominate other people, however, had a deadly impact on confrontations among whites as well, from the revolutionary era to the present. Slavery, for all its bluster about manhood, made white men needy and fragile. A man couldn't walk away from a fight or a dispute, however stupid or trivial, without feeling he was somehow less of a man, not only in the eyes of his neighbors, but in his own eyes. Such men were too weak not to fight, or too afraid of the consequences for their reputations. But they spun their weakness and fragility publicly as the something quite the opposite—as manliness, just as the title of the proposed bill before you tries to spin it, by calling it "no duty to retreat" rather than "too weak to walk away from a stupid fight." There's nothing manly about taking a life when you can walk away, or about responding to bullying (a sign of male weakness in itself) with bullying of your own. But that's what this bill is designed to do—to sell weakness as manliness.

The toxic culture born of slavery flourished in the era of Jim Crow. In 2019 historian Jeffrey Adler published a study of violence and criminal justice in New Orleans in the early 1920s. The murder rate there was astronomical, and jurors, backed up by rulings by the state's Supreme Court, lowered the bar for claims of "self-defense" and allowed an assailant to kill an unarmed adversary with a handgun from 20 or 30 feet away, even if the assailant instigated the confrontation and forced their adversary to issue threats in defense of their own honor.[6] Not surprisingly, the vast majority of murderers in New Orleans faced no legal sanction whatsoever. All they had to say is that they "felt threatened," or that they "thought" their adversary had a weapon, or that they "thought" their adversary was moving a hand toward a belt or pocket where a concealed firearm could have been kept. As Adler discovered, only one of every seven men (counting both black and white assailants) arrested for killing a man was found guilty of anything, even of a lesser charge like felonious assault. They got away with taking a life, even

though in the vast majority of these deadly confrontations, the assailants instigated the confrontation and could have walked away at any time. And for white men only? Of those who killed someone other than a spouse (which was still frowned upon as an unmanly act), only one in nine were convicted; and only one in forty of the defendants claimed “self-defense.”[7]

Our situation is not as dire today as it was back then in New Orleans. Violence was worse, and the criminal justice system was weaker. But we still face a situation in which most killers face no legal penalty, because our jurors and legal institutions too often sanction the unnecessary use of violence and because people sometimes refuse to testify against men who kill in situations that don’t fit the legal definition of self-defense. So-called “no duty to retreat” laws and court rulings have just made prosecutions against illegitimate uses of violence more difficult.

I have studied thousands and thousands of homicides, attempted murders, and aggravated assaults over the course of American history, from colonial times to the present. And my colleague at Cleveland State University, Wendy Regoeczi, and I are creating a comprehensive database on homicides in Ohio from 1959 to the present—the first state-level database to be based on multiple sources. Our goal is to count more accurately the number of homicides that have occurred since World War II and to understand better the character and circumstances of those homicides. Our evidence to date shows that thousands of homicides that have occurred in Ohio over the past sixty years have occurred under circumstances that the proposed “no duty to retreat” hopes to sanction—confrontations in which the person who took a life could have walked away. The number of Ohioans who have been killed in bar fights or road rage incidents is remarkable. And in all too many cases, the person who used deadly violence sought legal protection for their aggression in the claim that they felt threatened or thought the other person was armed. In fact, it’s hard to find an aggressor in Ohio who *didn’t* believe he was the victim,

that he was the one under threat, that he was the one acting in self-defense, when the evidence showed the opposite was true. What was really at issue in nearly all of these confrontations, however, was reputation—the fear that you would be seen as "less of a man," if you walked away. That is why "no duty to retreat" is a misnomer. It's really about being so fragile, so worried about what others might think if you were to back down from someone insulting you or barking at you, that you're afraid to walk away from a stupid fight.

Nations like Great Britain that have set a high bar on the right to self-defense are far less violent than the United States. But these societies have also set a far higher bar on what it means to be a man—on maintaining one's composure in the face of insults and threats, and on refusing to be drawn into physical confrontations with bullies. Being unflappable, keeping "a stiff upper lip," saves lives. Until our culture changes—until we root out the psychology born of slavery, Jim Crow, and frontier violence—we won't be a non-violent society. But abolishing the so-called "no duty to retreat laws" rooted in that psychology, in fragile male egos, is the best place to start. If we crack down on such violence, and set a higher standard for what it means to be a man—a standard in line with our nation's <u>professed</u> moral and religious values—we'll be making a good start on suppressing the most common kinds of violence in our society, lethal and non-lethal.

There is no question that we need laws to protect Americans who kill in self-defense. We live in by far the most violent affluent society in the world. Predatory violence is a daily occurrence—sexual assaults, robberies, home invasions. And some Americans, because of our occupations or the neighborhoods in which we live, face a far greater risk of such violence than others. But we have laws, sound laws, to protect Americans who kill in self-defense. We don't

need laws to protect Americans who kill in situations from which they could safely retreat. I urge you to oppose SB 383.

---

[1] Randolph Roth, *American Homicide* (Cambridge: The Belknap Press of Harvard University Press, 2009); and Roth, "Why Guns Are and Are Not the Problem: The Relationship between Guns and Homicide in American History," in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 113-133.

[2] Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York: Oxford University Press, 1991), 3-37. In the nineteenth and early twentieth centuries, the doctrine of "no duty to retreat" was enshrined in American law not by legislation, but by the decisions of jurors and lower courts, which were upheld in the rulings by state Supreme Courts, including Ohio's in 1876. The current "stand your ground" movement seeks to codify in legislation the rulings that Supreme Courts in Ohio and elsewhere have already handed down. Until recently, state legislatures balked at granting American gun owners an explicit license to kill in circumstances where retreat was possible, because such license was contrary to the basic tenets of Christianity. That is why legislatures left the matter to the courts, until the Florida legislature passed a "stand your ground" law in 2005.

[3] Avidit Acharya, Matthew Blackwell, and Maya Sen, *Deep Roots: How Slavery Still Shapes Southern Politics* (Princeton: Princeton University Press, 2018).

[4] David K. Humphreys, Antonio Gasparrini, and Douglas J. Weber, "Evaluating the Impact of Florida's 'Stand Your Ground' Self-Defense Law on Homicide and Suicide by Firearm," *Journal of the American Medical Association* 177:1 (2017: 44-50).

[5] David K. Humphreys, Antonio Gasparrini, and Douglas J. Weber, "Association between Enactment of a 'Stand Your Ground' Self-Defense Law and Unlawful Homicides in Florida," *Journal of the American Medical Association* 177:10 (2017: 1523-1524).

[6] Brown, *No Duty to Retreat*, 3-37.

[7] Jeffrey S. Adler, *Murder in New Orleans: The Creation of Jim Crow Policing* (Chicago: University of Chicago Press, 2019).