

ON DEATH'S DOORSTEP: THE RACIALLY STRATIFIED IMPACT OF THE MICHIGAN SELF-DEFENSE ACT AND WHY RACE-CENTRIC ADVOCACY IS NOT THE ANSWER

JACOB WOLF*

On July 20, 2006, Michigan joined the growing number of states to enact "Stand Your Ground" legislation. These statutes marked a dramatic expansion of the common law Castle Doctrine by allowing individuals to employ deadly force against assailants without first considering whether there were reasonably available avenues of retreat to safety. This Note first examines the effect of the Michigan Self-Defense Act on the state's legal landscape, ultimately concluding that the law provides individuals with an overbroad license to use deadly force in situations that could be resolved peacefully. This leads to the creation of a "shoot first" culture in which individuals feel empowered to resort to violent self-defense tactics without first evaluating alternative available means. This Note argues that the shoot first culture enabled by the Act poses a disproportionate threat to Black Americans due to the longstanding subconscious associations of Blackness with criminality. Black Americans thus face a significantly greater likelihood of being incorrectly perceived as threatening, and, coupled with the statute's expansive permit to use deadly force, killed by those who opt to stand their ground. The Note also argues that race-centric advocacy strategies opposing Stand Your Ground laws are likely to be polarizing and ineffective, and instead proposes a shift to principles grounded in empathy and dialogue.

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I. Introduction

On October 1, 2005, Florida passed the country's first "Stand Your Ground Law"—designed to empower victims of violent crime by abrogating the duty to retreat, enabling victims to "stand their ground" and employ deadly force against attackers—and dramatically changed the state of self-defense laws across the nation.¹ In the next few years, over thirty states followed Florida's example and enacted expansive Castle Doctrine laws of their own.² Michigan was one of these states, joining the Stand Your Ground movement in 2006 when it passed its Self-Defense Act (hereinafter, "Self-Defense Act" or "Act").³ While most of the literature surrounding these acts has centered on Florida, this Note will use Michigan as a vehicle to explore this controversial legislation. Michigan is a particularly interesting state for this analysis, as it has relatively strict gun control measures in place and offers a unique juxtaposition between the predominantly black and crime-ridden Detroit and the largely white and safe suburbs.⁴ As this Note will demonstrate, this racial division played a significant role in the passage of the Self-Defense Act, and remains at the forefront of the ongoing debate regarding the racial implications of the law. This Note will explore this debate, first by providing a context through a discussion of the Act's legislative history and legal consequences, and then by offering a critique of the race-centric advocacy strategies employed by gun control activists seeking to repeal stand your ground legislation.

The first section, "The *Riddle* of Self-Defense," considers the legal ramifications of Michigan's shift from its common law castle doctrine precedent, *People v. Riddle*,⁵ to its statutory codification of Stand Your Ground. This section explains the legal context of Michigan self-defense law, and provides the reader with a legal framework with which to better understand the Act's racial implications. The second section, "White Guns, Black Graves," closely examines these racial implications by examining the Act's legislative process, social psychological studies linking race to perceptions of criminality, and the influence of the National Rifle Association ("NRA") in the legislative process. This section illustrates the Act's potential to unfairly victimize Blacks due to subconscious associations of Blackness with criminality. Finally, the third section, "Dialogue not Diatribe," proposes a new approach to addressing the racial injustices exacerbated by the Act. The common strategy employed by opponents of Stand Your Ground relies on outwardly racially charged rhetoric; however, this section argues that the Act's opponents should

* J.D. Candidate 2015, Columbia Law School; B.A. 2012, Skidmore College. The author would like to thank Professor Jeffrey Fagan for his advice and support in writing this Note; and the staff of the *Columbia Journal of Race & Law* for their diligence and thoughtfulness in editing this piece.

¹ See Lydia Zbrzezni, *Florida's Controversial Gun Policy: Liberally Permitting Citizens to Arm Themselves and Broadly Recognizing the Right to Act in Self-Defense*, 13 FLA. COASTAL L. REV. 231, 232 (2012).

² See Sean Sullivan, *Everything You Need to Know About 'Stand Your Ground' Laws*, THE WASHINGTON POST (July 15, 2013, 10:48 AM), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/15/everything-you-need-to-know-about-stand-your-ground-laws/>.

³ Mich. Comp. Laws Ann. § 780.792 (2006).

⁴ *Brady Campaign 2011 Score Card: 2011 State Rankings*, BRADY CAMPAIGN, available at http://www.bradycampaign.org/sites/default/files/2011_Brady_Campaign_State_Scorecard_Rankings.pdf.

⁵ 649 N.W.2d 30 (2002).

utilize empathetic dialogue in order to transcend race, humanize the issue, and highlight the devastating effects Stand Your Ground has on families and communities.

II. The *Riddle* of Self-Defense: Michigan's Shift from Common Law Castle Doctrine to Stand Your Ground

In order to fully understand the implications of the Self-Defense Act of 2006, it is imperative to examine Michigan's common law justifiable homicide doctrine before the Act's enactment. The leading statement of this doctrine is the 2002 Michigan Supreme Court case of *People v. Riddle*. This section, through an examination of *Riddle*, seeks to provide context in which to place the enactment of the Self-Defense Act. It will begin by explaining the facts and holding of the *Riddle* case. Next, it will discuss the legal impact of the Self-Defense Act and how it alters the common law doctrine under *Riddle*. Finally, it will illustrate the legislation's effect by analyzing the facts of *Riddle* as though they occurred after the implementation of the Act.

A. An Explanation of *People v. Riddle*

The case involved an altercation between Marcel Riddle and his friend, Robin Carter, during which Riddle killed Carter by shooting him eleven times in the legs with an automatic carbine rifle in the presence of a third party, James Billingsley.⁶ The shooting occurred in the driveway outside of Riddle's home.⁷ The facts of the case were disputed due to inconsistent testimony from Billingsley and Riddle.⁸ Billingsley claimed that Carter made insulting remarks about Riddle's fiancé, and, in response, Riddle went into his home, armed himself with a rifle, and walked back outside and shot Carter.⁹ Billingsley further testified that Carter was unarmed and did not approach Riddle after he returned with his rifle.¹⁰ Riddle, however, contended that he was intervening in an argument between Billingsley and Carter. Perceiving Carter to be the more aggressive party, Riddle asked him to leave.¹¹ He testified that he saw a "dark object" that he believed to be a gun in Carter's hand. Riddle immediately grabbed his rifle from his detached garage, and fired at Carter's legs with the intent to scare him.¹²

The lower court convicted Riddle of second-degree murder and possession of a firearm during a felony.¹³ Riddle appealed to the Michigan Supreme Court, arguing that, under the circumstances, he had no duty to retreat before using deadly force against Carter.¹⁴ In reaching its decision, the court considered two prongs of the justifiable homicide doctrine. First, the court determined the extent of Michigan's "Castle Doctrine," and whether a driveway was encompassed by the definition of "castle."¹⁵ Second, the court analyzed whether Riddle was obligated to retreat before exercising deadly force against Carter.¹⁶

⁶ *Id.* at 35.

⁷ *Id.*

⁸ *Id.* at 36.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 37.

¹⁴ *Id.*

¹⁵ *Id.* at 42.

¹⁶ *Id.* at 47.

The Castle Doctrine was codified into Michigan law with the enactment of the state's first murder statute in 1846.¹⁷ The court noted that one justification for the Castle Doctrine lies in the notion that there exists "an instinctive feeling that a home is sacred, and that it is improper to require a man to submit to pursuit from room to room in his own house."¹⁸ Additionally, a person's home is "his primary place of refuge ... there is simply *no safer place* to treat [sic]."¹⁹ Though other jurisdictions had previously extended the Castle Doctrine to include areas such as the driveway,²⁰ the Michigan Supreme Court opted against such an expansion in *Riddle*. The court relied heavily on language from its own 1860 precedent, *Pond v. People*: "A man is not, however, obliged to retreat if assaulted *in his dwelling*."²¹ The court reasoned that the emphasized language precluded it from expanding the Castle Doctrine to any areas beyond the inhabited dwelling itself.²² Under Michigan common law, the duty to retreat is abrogated only inside one's home; *Riddle* was therefore barred from asserting the Castle Doctrine as a defense to killing Carter.²³

After finding the Castle Doctrine to be inapplicable on the facts of this case, the court turned its attention to whether any other exception to the duty to retreat would justify *Riddle's* actions. First, the court stated the common law rule of justifiable homicide: "[T]he killing of another person in self-defense is justifiable homicide only if the defendant honestly and reasonably believes his life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary to exercise deadly force to prevent such harm to himself."²⁴ The court highlighted the requirement of "necessity" in a finding of justifiable homicide, and emphasized that this is a fact-intensive inquiry.²⁵ Beyond the Castle Doctrine, there was one other scenario in which a self-defense killing was justified under Michigan common law: "when a person is violently attacked and it does not reasonably appear that it would be safe to retreat."²⁶ The court reaffirmed the governing principles of self-defense that were articulated in the 1850 case *People v. Doe*.²⁷ In that case, the court outlined three rules of justifiable homicide. First, when a person was acting lawfully and was attacked by another under circumstances that indicate a risk of death or great bodily harm, the victim could kill his adversary provided that he attempted to retreat or disable his attacker before using deadly force.²⁸ Second, if a person was attacked in a manner that was so "sudden, fierce and violent" that retreat would increase the danger he was in, he was allowed to kill the assailant without any attempt to retreat.²⁹ Finally, if there was reasonable ground to believe the assailant intended to kill or commit any felony upon the victim, then the victim's use of deadly force would be "excusable homicide" even if it was subsequently be determined that no felony was intended.³⁰ Taken together, these rules establish that though there was a duty to retreat whenever a person can safely avoid an attack, "one [was] never obliged to *retreat* from a sudden, fierce, and violent attack, because under such circumstances a reasonable person would, as a rule, find it necessary to use force against force without retreating. The violent and sudden

¹⁷ See *id.* (explaining the history of the Castle Doctrine in Michigan common law).

¹⁸ *Id.* at 42.

¹⁹ *Id.* at 43.

²⁰ *Id.*

²¹ *Pond v. People*, 8 Mich. 150, 177 (1860) (emphasis added).

²² *Riddle*, 649 N.W.2d. at 43.

²³ *Id.*

²⁴ *Id.* at 38.

²⁵ *Id.*

²⁶ *Id.* at 39.

²⁷ *People v. Doe*, 1 Mich. 451 (1850).

²⁸ *Id.* at 456.

²⁹ *Id.* at 457.

³⁰ *Id.*

attack remove[d] the ability to retreat.”³¹ Thus, before the enactment of the Self-Defense Act, Michigan common law imposed a duty to retreat from assailants whenever safely possible.

The *Riddle* court also explained that, at common law, there was only one scenario in which Michigan law imposed an affirmative duty of retreat. When a defendant was engaged in mutual, non-deadly combat (and outside his “castle”) that suddenly escalated into deadly violence, the defendant was barred from employing deadly force so long as there existed any other reasonable way to save his life.³² The rationale for this duty was that the defendant, by virtue of voluntarily engaging in the initial combat, was not free from fault and thus not entitled to stand his ground. In sum, “at common law the innocent victim of a murderous assault had no affirmative duty to retreat; instead, if he reasonably believed that it was necessary under the circumstances to exercise deadly force, he could kill his assailant in self-defense. This rule is consistent with the generally applicable rules of self-defense as codified in Michigan’s murder statutes.”³³ So long as an otherwise innocent defendant could prove that there existed no reasonable opportunity for retreat, then he was entitled to stand his ground under Michigan common law.

In *Riddle*, the court affirmed the defendant’s conviction. It rejected *Riddle*’s argument that the jury instructions were inadequate, finding that they properly explained that the defendant was only obligated to retreat if he could do so safely.³⁴ The court also noted that the jury was permitted to “consider how the excitement of the moment affected the choice the defendant made in exercising deadly force.”³⁵ These instructions provided *Riddle* a sufficient opportunity to demonstrate to the jury that it was necessary for him to take Carter’s life.

B. The Legislative Reaction to *Riddle*

The Self-Defense Act of 2006 abrogated the duty of retreat that had existed in Michigan common law for over 150 years by extending the Castle Doctrine to “anywhere [an individual] has a legal right to be.”³⁶ The relevant section of the Act is M.C.L. 780.972(1), which provides:

An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

³¹ *Riddle*, 649 N.W.2d at 39 (emphasis in original).

³² *Id.* at 39.

³³ *Id.*

³⁴ The jury instructions were as follows: “By law, a person must avoid using deadly force if he can safely do so. If the defendant could have safely retreated but did not do so, you can consider that fact along with all the other circumstances when you decide whether he went farther in protecting himself than he should have. However, if the defendant honestly and reasonably believed that it was immediately necessary to use deadly force to protect himself from an [imminent] threat of death or serious injury, the law does not require him to retreat. He may stand his ground and use the amount of force he believes necessary to protect himself.” *Id.*

³⁵ *Id.* at 46.

³⁶ Mich. Comp. Law Ann. § 780.972 (2006).

(b) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual.³⁷

At first glance, the language of the statute does not appear to indicate a marked shift from the common law rule announced in *Riddle*. An individual who “honestly and reasonably” believes that deadly force is necessary may resort to it. This language seems to track the emphasis placed on “necessity” by the *Riddle* court. The primary difference between the statute and the common law, however, is that under common law there was a duty to avoid using deadly force by retreating if reasonably possible (with the exception of the Castle Doctrine). At common law, the jury was also permitted to consider how the excitement of the moment affected the decision to exercise deadly force. This would presumably encourage the jury to empathize with the defendant, and prevent a cool-headed and detached jury from second-guessing the frantic actions of a defendant whose life was in danger. The statute thus only alters the justifiable homicide analysis in one set of cases: when a defendant resorts to deadly force in a situation in which he or she could have retreated to safety.

As discussed above, at common law, a jury would scrutinize the reasonableness of a defendant’s potential ability to retreat. This reliance on jury discretion could seem unfair to defendants who believed they were in a life-or-death situation and thus neglected to utilize an obvious avenue of retreat. Such a defendant would likely question a jury’s fitness to assess a self-defense situation when they were not present in the heat of the moment. Conversely, the jury instructions would provide safeguards to prevent second-guessing. By emphasizing that there was no affirmative duty to retreat (except for cases involving voluntary combat), the common law offered the jury significant latitude in justifying a homicide. The common law, however, signified that the Michigan courts believed that requiring defendants to retreat whenever reasonably possible would ultimately save more lives. Such a policy potentially reduces the risk of mistaken self-defense killings, in which a frightened defendant used deadly force against a perceived assailant. Proponents of the Self-Defense Act, however, would argue that imposing an obligation to retreat protects unlawful aggressors while needlessly risking the lives of individuals acting lawfully.

Statutes passed concurrently with the Self-Defense Act further altered the Stand Your Ground landscape of Michigan. The legislature also enacted a law granting immunity from civil liability to individuals who acted in compliance with the Self-Defense Act, even if the “honest and reasonable” fear was erroneous.³⁸ If a victim (or the family of a victim) of an actor’s misguided but legally justified exercise of deadly force brings a civil action against the actor, the court will award the payment of attorneys’ fees and costs to the actor.³⁹ There is thus no legal recourse for the victims of deadly force caused by an “honest and reasonable”—yet ultimately mistaken—fear of imminent harm. Finally, the legislature also created a rebuttable presumption that an individual using deadly force pursuant to the Self-Defense Act is acting with an honest and reasonable belief that “imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual.”⁴⁰ This presumption, though, is limited to when the individual against whom deadly force is used is engaged in breaking and entering a dwelling or business premises or

³⁷ *Id.*

³⁸ Mich. Comp. Law Ann. § 600.2922b (2006) (“An individual who uses deadly force or force other than deadly force in self-defense or in defense of another individual in compliance with section 2 of the self-defense act is immune from civil liability for damages caused to either of the following by the use of that deadly force or force other than deadly force . . .”).

³⁹ Mich. Comp. Law Ann. § 600.2922c (2006).

⁴⁰ Mich. Comp. Law Ann. § 780.951 (2006).

trying to remove an individual forcibly from a dwelling, business premises, or occupied vehicle.⁴¹ When the aforementioned criteria are met, the burden of proving “honest and reasonable belief” shifts from the defendant to the prosecution.⁴² That is, rather than the defendant needing to demonstrate that they were acting with such a belief, the responsibility is instead placed on the prosecutor to affirmatively disprove that the defendant acted honestly and reasonably.

Due to the common law’s refusal to establish a general affirmative duty to retreat, the statutory abrogation of the duty to retreat would not dramatically alter a justifiable homicide analysis in most close cases. The cases in which the statute would significantly affect the outcome are those in which there was an obvious avenue of retreat. A useful way to understand the differences between the common law and the Act is through a reexamination of *People v. Riddle* as though it were decided after 2006.⁴³

C. A Reexamination of *Riddle* Under the Self-Defense Act of 2006

A case such as *Riddle* would potentially come out differently under the Self-Defense Act than at common law. The common law analysis would hinge on three questions: Was the fear of death or great bodily harm honest and reasonable? Was there any duty to retreat (i.e., was the driveway part of Riddle’s castle)? Was there a reasonable means of safe retreat available to the defendant? An analysis under the Act would only ask the first question.

Under common law, the Michigan Supreme Court declined to extend the Castle Doctrine to encompass Riddle’s driveway, thus implicating the duty to retreat, if feasible. Whether Riddle had a safe avenue of retreat available to him would be a determining factor in considering Riddle’s culpability. On these facts, there is a convincing argument to be made that Riddle could have safely retreated. The events took place just outside Riddle’s house. He presumably had a “home-field advantage,” in that he knew the layout of his home and neighborhood better than Carter. Riddle also had time to procure his rifle and shoot Carter before Carter threatened him with any force, and one could assume that in this timeframe he could have entered his house (or garage) and locked the door behind him. Thus, under the common law, there is a strong possibility that Riddle would have been convicted on the grounds that he needlessly exercised deadly force against Carter.⁴⁴

Under current Michigan law, the jury would not have considered whether Riddle had the ability to safely retreat. Instead, the focus would have been on whether Riddle honestly and reasonably feared that he was at risk of being killed or suffering great bodily harm. The standard for reasonableness has been expressed as “what an ordinarily prudent and intelligent person would do on the basis of the perceptions of the actor.”⁴⁵ Many factors might enter this analysis, particularly since Riddle and Carter knew each other. The personal relationship between Riddle and Carter would likely be at the forefront of the jury deliberation, as Riddle’s knowledge of Carter’s propensity for violence would be a central question. A jury might be interested in evidence indicating whether Carter had a short temper or was frequently involved in violent altercations. The jury might also want to know if Carter owned a firearm, and, if he did, if he often carried it on his person. If the answer to any of those inquiries was affirmative and it was

⁴¹ *Id.*

⁴² *Id.*

⁴³ For purposes of this exercise, the factual record will be deduced from Riddle’s testimony. Under Billingsley’s account of the events, Riddle would have no basis for a self-defense claim as he was never under any threat from Carter. Furthermore, the case will be analyzed on its merits, and not focused solely on the question of jury instructions.

⁴⁴ Riddle was convicted of second-degree murder; however, it is unclear if the jury based this on believing Billingsley’s testimony or on finding a duty to retreat.

⁴⁵ *People v. Guajardo*, 832 N.W.2d. 409, 417 (2013).

demonstrated that Riddle was aware of these traits, then that would encourage a jury to find Riddle's exercise of deadly force reasonable. Other considerations might include whether Carter was angry with or had threatened Riddle (as Riddle's testimony indicated the argument was between Carter and Billingsley), and whether there was an opportunity for Riddle to simply point the rifle at Carter threateningly without actually firing. In order to demonstrate Riddle's reasonableness, the defense counsel would likely attempt to highlight any aggressive tendencies Carter possessed and any past hostility between the two men. The requisite factual record to make such a determination was not presented in this case, but it is sufficient to note that the outcome of the case under the Self-Defense Act would have been a heavily fact-dependent decision. Thus, though Carter was unarmed and Riddle could have retreated to his house, there remains a serious possibility that Riddle would have been acquitted.

Tweaking the facts of the case to create a scenario in which Riddle and Carter were strangers further illustrates the impact of the Self-Defense Act. At common law, the retreat analysis would be unchanged; it would still appear likely that Riddle had a safe avenue of retreat from Carter. The reasonableness inquiry, however, would shift dramatically. If Riddle had never met Carter before, there would be far fewer facts from which a jury could find that Riddle acted unreasonably. If Riddle knew Carter did not own a firearm or considered Carter to be nonviolent, such information would weigh heavily in favor of a jury verdict that Riddle's exercise of deadly force was unreasonable. In the new factual scenario, however, these facts would not exist. On Riddle's testimony, all the jury would know would be that a stranger, Carter, was aggressively arguing with Billingsley, Riddle saw a dark object in his hand, and, believing it to be a gun, shot Carter to death.

In this scenario, there would be a strong possibility of acquittal. Many similarly situated self-defense cases, such as the police shooting of Amadou Diallo in 1999⁴⁶ or the recent trial of George Zimmerman outlined above, have resulted in the exoneration of the defendant on the grounds that the use of deadly force was reasonable. These results indicate that Professor Stephen Garvey's theory of self-defense is often highly relevant to jury determinations: "[T]he beliefs we possess at any moment are *not* up to us . . . [T]he belief that . . . I am about to be killed, and deadly force is necessary to avoid being killed--is one that only a saint or a fool would ignore. An actor who believes that he is about to be killed could remain passive, but why should he? What good reason would he have to do nothing?"⁴⁷ Evaluating the reasonableness of a defendant on the basis of his or her perception of the situation is a standard that sets a high bar for a jury to find any self-defense action unreasonable. If a jury accepted Riddle's testimony that he saw a dark object in the hand of an aggressive stranger, it would be likely to find that employing deadly force was a reasonable response to that threat.

There is one other factor that pervades the jury deliberation process: race. A study conducted by Professors Samuel Sommers and Phoebe Ellsworth found that white jurors were more likely to show racial bias in cases that lacked overt racial issues—that is, a self-defense case in which Riddle happened to be white and Carter black as compared to a case in which Riddle was an outspoken member of the Aryan Nation and Carter was black.⁴⁸ The study found that white jurors were more likely to find a black defendant guilty than a white defendant, recommend a harsher sentence for convicted black defendants,

⁴⁶ Four police officers fired 41 [AS: spell out forty one] shots at and killed Amadou Diallo on the mistaken belief that he was an armed serial rapist. Diallo reached into his jacket to produce his wallet, which the police officers mistook for a gun. Diallo was unarmed. All four officers were acquitted of all charges. See Jane Fritsch, *4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000 at A1.

⁴⁷ Stephen P. Garvey, *Self-Defense and the Mistaken Racist*, 11 NEW CRIM. L. REV. 119, 126 (2008).

⁴⁸ Samuel Sommers & Phoebe Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCHOL. PUB. POL'Y & L. 201, 201-29 (2001).

and rate the defense's case for a white defendant as strong or stronger than for a black defendant even though the defense counsel's examinations and arguments were identical in both scenarios.⁴⁹ This study accords with similar experiments regarding implicit bias and perceptions of black criminality that will be discussed later in this Note.⁵⁰

The statutory elimination of the duty to retreat significantly increases the number of scenarios in which deadly force can be justifiably used. This legislative abrogation has enabled defendants to eschew safe avenues of retreat in favor of exercising deadly force, potentially changing a second-degree murder conviction in a case like *Riddle* into an acquittal. This shift may encourage defendants such as Riddle to stand their ground and not even consider the possibility of utilizing a safe avenue of retreat, thus leading to more erroneous self-defense shootings of unarmed aggressors. Furthermore, the impact of implicit bias on jury deliberations may lead to serious inequities in the judicial system. If jurors subconsciously equate black men with criminality, and people, regardless of their race, are generally more likely to shoot an unarmed black man than an unarmed white man, then it seems reasonable to infer that the repeal of the duty to retreat will have effects that disparately impact Blacks.⁵¹ The Self-Defense Act removed an important check on the ability of an individual to lawfully kill another, a choice that is too often derived from misplaced stereotypes of black men. The legislative process that led to the enactment of the Self-Defense Act illustrates this sentiment, as support for the Act was severely divided along race lines.

III. White Guns, Black Graves: The Racially Disparate Impact of the Self-Defense Act

Stand Your Ground was codified in Michigan on July 20, 2006 when then-Governor Jennifer Granholm signed the self-defense package of legislation into law.⁵² This section will address multiple issues that arose from this lawmaking. First, it will reveal the troubling racial breakdown of supporters of this legislation. Next, it will investigate if these laws are successful in deterring criminal behavior and explore the unintended consequences of the legislation.

A. The Legislative Process of the Self-Defense Act

According to a national survey conducted by the Pew Research Center, Whites are disproportionately in favor of gun rights compared to people of color.⁵³ 63% of white men and 45% of white women (53% of responding Whites) believe that protecting the right to own guns is more important than controlling gun ownership.⁵⁴ By contrast, only 24% of Blacks and 27% of Hispanics favored the right to own guns.⁵⁵ Based on these numbers, the voting results for the Self-Defense Act in the Michigan Senate are unsurprising. The Act, then-House Bill 5143, passed with tremendous bipartisan support in both the House and the Senate. The House passed the legislation by a vote of 90-16,⁵⁶ while the Senate

⁴⁹ *Id.* at 219-20.

⁵⁰ See, e.g., Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1314-29 (2002).

⁵¹ *Id.*

⁵² *Ann Arbor City Council seeks repeal of 'stand your ground' law*, MINBCNEWS.COM (Aug. 09, 2013, 7:48 AM), <http://www.minbcnews.com/news/story.aspx?id=931824#.VFb6o4dziE4>.

⁵³ PEW Research Center, *In Gun Control Debate, Several Options Draw Majority Support*, (Jan. 14, 2013), <http://www.people-press.org/files/legacy-pdf/01-14-13%20Gun%20Policy%20Release.pdf>.

⁵⁴ *Id.* at 9.

⁵⁵ *Id.*

⁵⁶ *2005 House Bill 5143: Repeal 'Duty to Retreat in Self-Defense'*, <http://www.michiganvotes.org/RollCall.aspx?ID=200656> (last visited Dec. 16, 2013).

voted 28-10 in favor of the law.⁵⁷ These numbers, however, are misleading. Though Michigan is approximately 14.2% black,⁵⁸ which is slightly higher than the proportion of black Americans nationally,⁵⁹ the black population is highly concentrated in a few areas such as Detroit.⁶⁰ Blacks thus lack significant political clout outside of Detroit.

This segregation was illuminated by the vote on the Stand Your Ground legislation. Though the vote had significant bipartisan support, in reality the vote was highly racially stratified. In the Senate, no senator representing a district with a greater than 17.4% black constituency voted in favor of the Act.⁶¹ Democratic Senators Hansen Clarke, Buzz Thomas III, Burton Leland, Martha Scott, and Irma Clarke-Coleman each were elected by districts with a majority black population and all voted against the Act.⁶² Every senator voting in favor of the Act represented a constituency that was at least 69% white.⁶³ Furthermore, the districts of twenty-five of the twenty-eight Senators that supported the Act were over 80% white.⁶⁴ Clearly, the Michigan polity was split along racial lines with respect to this legislation; Blacks were largely against the Act and Whites supportive of it. This dichotomy is significant because, as will be shown below, white Michiganders were creating policy for an issue that disproportionately affects black Michiganders.

These numbers are particularly compelling when one considers the impact of firearms on public safety in Michigan. In February 2006, a few months before the Self-Defense Act was signed into law, the Michigan Department of Community Health released a study regarding firearm homicide and suicide in Michigan. The study focused on data from the years 1999-2003, and found that firearms were used in 71% of Michigan homicides during this time period. This reveals that more often than not, Stand Your Ground cases will implicate firearm usage.⁶⁵ The study also found that Blacks were victimized by firearm homicide at a rate of twenty times that of Whites, and that black males between the ages of 20-24 had a firearm homicide rate that was 34 times the overall rate.⁶⁶ Furthermore, while the firearm homicide rate of those living in the predominantly black Detroit was 32.5 deaths per 100,000 residents, every other county in the state (with the exception of Wayne County) possessed a rate of fewer than seven deaths per 100,000 residents.⁶⁷ This data is extremely troubling, as it demonstrates that the black community suffers from firearm homicides at a disproportionately higher rate than white Michiganders.

Using the Center for Disease Control and Prevention's WISQARS program shows that this trend continued through 2007 (the final year of WISQARS data for Michigan). Between 2004-2007, the leading

⁵⁷ PROJECT VOTE SMART, *HB 5143 – 'Self Defense Act' – Voting Record* (June 6, 2006), <http://votesmart.org/bill/votes/5214?s=vote>.

⁵⁸ U.S. CENSUS BUREAU, *Profile of General Population and Housing Characteristics: 2010*, <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Dec. 16, 2013) (Both the 2000 and 2010 census report Michigan's black population to be 14.2%).

⁵⁹ U.S. CENSUS BUREAU, *State and County Quick Facts, Michigan*, <http://quickfacts.census.gov/qfd/states/26000.html> (last visited Dec. 16, 2013) (hereinafter "Census Quick Facts").

⁶⁰ MICH. DEPT OF TECH., MGMT. AND BUDGET, *Demographic Profiles for Michigan from the 2010 Census*, http://www.michigan.gov/cgi/0,4548,7-158-54534_51841_51848-255807--,00.html (last visited Dec. 16, 2013).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ THOMAS W. LARGO & LINDA SCARPETTA, *Firearm Homicide and Suicide in Michigan*, MICH. DEPT OF CMTY. HEALTH (Feb. 2006), available at https://www.michigan.gov/documents/Firearm_Homicide__Suicide_Report_162746_7.pdf.

⁶⁶ *Id.*

⁶⁷ *Id.*

cause of violent death for Blacks in Michigan was overwhelmingly firearm homicide. There were 1,600 black firearm homicide victims in the state during these years; the next most common form of violent death, firearm suicide, was a distant second with only 171 of these occurring in the black community.⁶⁸ In the white community, however, firearm homicide was only the fourth most frequent cause of violent death during this time period, trailing three types of suicide (firearm, suffocation, and poisoning). The overwhelmingly most common cause of violent death in the white community during this time was firearm suicide—there were 2,038 firearm suicides as compared to 404 firearm homicides.⁶⁹ These numbers are particularly concerning when one considers that there are roughly 7.8 million Whites in Michigan and only 1.4 million Blacks.⁷⁰ Thus, though Whites outnumber Blacks by a rate of approximately five and a half to one, the number of Blacks killed by gun violence is nearly four times as high—from 2004-2007, Blacks were shot to death at a rate 22 times higher than Whites.

Another important statistic to consider is the violent crime rate in the state. Michigan's violent crime rate in the 2000's is relatively low compared to previous decades, and approximately tracks the national trends (though Michigan's rate is consistently higher than the national average). Between 1990 and 2003, the firearm homicide rate in Michigan declined by 41%.⁷¹ Additionally, in 1990 the violent crime rate in Michigan was 790.4 per 100,000 residents, and declined to 553.8 by the time the Act was introduced in 2005.⁷² It is noteworthy, however, that the violent crime rate in the state climbed from 492.2 in 2004 to 553.8 in 2005, which helps to explain some of the impetus for the legislation. This number, however, still represents a lower figure than any violent crime rate in Michigan between the years 1970 and 2002.⁷³ Even this small jump in the violent crime rate thus does not explain the sudden (and nationwide) call for enhanced Stand Your Ground legislation. It is strange that this overwhelming popularity of Stand Your Ground measures came at a relatively low-crime time in the state. It is even more curious that the districts that were most supportive of the Act were some of the safest in the state, while the area most affected by violent crime, Detroit, was opposed to the legislation.

An interview with the drafter of the legislation, then-Representative Rick Jones (R-71st District), offers insight into the process of conceptualizing the Act. At the time of the bill's introduction, Jones served as the representative for Eaton County. When asked to describe the demographics of the area, Jones stated that:

Eaton County is made up of a large agricultural, rural area, but also a large urban area near Lansing. It is a mix of racial makeup. The major employers are General Motors, Michigan State, and the State Government . . . Other major employers would be like auto owners insurance . . . and BlueCross has some offices. So you're talking a lot of people working in that industry also. Gun owners, I don't have any statistics in front of me but I would say that probably it's very high—the households that have some sort of firearm for hunting or home protection or something like that.⁷⁴

⁶⁸ WISQARS, *Fatal Injury Reports, 1999-2010, for National, Regional, and States*, <http://webappa.cdc.gov/cgi-bin/broker.exe> (last visited December 16, 2013).

⁶⁹ *Id.*

⁷⁰ *Census Quick Facts*, *supra* note 59.

⁷¹ Largo & Scarpetta, *supra* note 65.

⁷² *Michigan Crime Rates 1960-2012*, THE DISASTER CENTER, <http://www.disastercenter.com/crime/micrime.htm> (last visited December 16, 2013).

⁷³ *Id.*

⁷⁴ Interview with Rick Jones, State Senator of Michigan (Nov. 22, 2013).

Though technically true, this assessment is misleading. The above account of the demographics of Eaton County, Michigan implies that it is home to a fair amount of diversity. In reality, however, Eaton County is largely a middle-class, white district. As of 2012, 88.6% of the residents of Eaton County self-identified as white, while only 6.8% of residents self-identified as black.⁷⁵ The median income is slightly over \$54,000, which is close to \$6,000 above the statewide median, but only 3.4% of businesses are owned by Blacks.⁷⁶ Thus, unsurprisingly, the Self-Defense Act originated in a predominantly white and economically stable district of Michigan. Furthermore, when asked whether Eaton County represented a high crime district, Jones conceded: "I would say Eaton County, as far as the crime rate when compared with the rest of the state, would be fairly low. We do have some high crime areas [and] that would be Detroit and Flint and Saginaw and Pontiac, but I would say Eaton County is fairly low in comparison."⁷⁷ Therefore, not only did the legislation originate in a largely white district, the bill's drafter acknowledges that the area is relatively safe. Meanwhile, many of the Senators that voted against the Act represented constituents in Detroit and Flint, identified as two of the highest crime cities in the state. The discord in this correlation is evident; intuitively, one would imagine that support for enhanced self-defense protections would manifest in more dangerous areas.

These numbers reveal a racial divide behind the enactment of the Self-Defense Act. Though superficially the laws received widespread support, the statistics belie the fact that support for the legislation was extremely split along racial lines. Despite being victimized by firearm homicide at vastly disproportionate rates, black residents of Michigan were strongly against the Act. Whites, on the other hand, were enthusiastically supportive of the laws even though they were relatively infrequently the victims of violent crime. Since the basis of the Act was to enable individuals to better defend themselves against violent crime, it would seem intuitive that those who suffer the most from violence, Blacks, would be more supportive of the law. The opposite occurred, however, as the most crime-ridden communities in the state were the only groups to vote against the bills' passage. The dissonance in this phenomenon is obvious. The demographic most plagued by violence is also the group whose wishes are ignored in reforming self-defense doctrine, and relatively crime-free white communities are empowered to craft policies that are particularly dangerous for and unwanted by Blacks.

B. Implicit Bias and the Consequences of Stand Your Ground

Renisha McBride is dead. At approximately 2:00AM on November 2, 2013, McBride was in a car accident.⁷⁸ She approached a home in Dearborn Heights, Michigan, a community that as of the 2010 census was 86.1% white.⁷⁹ McBride was not in possession of her cell phone and knocked on the door of the home. She was seeking assistance after the car accident. The homeowner opened the door, armed with a shotgun. He aimed the gun at McBride's face. The facts after this are in dispute. The homeowner claims the gun fired accidentally, while others question how a gun could fire accidentally without a finger on the trigger. What is known is that Renisha McBride, a 19-year old, unarmed black woman, a high school

⁷⁵ *Census Quick Facts*, *supra* note 60.

⁷⁶ *Id.*

⁷⁷ Interview with Rick Jones, *supra* note 75.

⁷⁸ Gus Burns, *Warrant Review Underway in the Dearborn Heights Shotgun Killing of Renisha McBride*, MICHIGAN LIVE (Nov. 11, 2013), http://www.mlive.com/news/detroit/index.ssf/2013/11/warrant_review_underway_in_the.html.

⁷⁹ *Census Quick Facts*, *supra* note 59.

graduate and an aspiring law enforcement officer is dead,⁸⁰ and that a 54-year old white man killed her.⁸¹ At the time, there was question of whether the family would receive either criminal or civil justice due to the Self-Defense Act. The homeowner's lawyer, Cheryl Carpenter, claimed that she was "confident [that] when the evidence comes it will show that [her] client was justified and acted as a reasonable person would who was in fear for his life."⁸² Ultimately, Wafer was convicted of second-degree murder, manslaughter, and a felony weapons charge and sentenced to a minimum of seventeen years in prison.⁸³ This result, though a just outcome, will not bring McBride back. The Renisha McBride case is tragic. Unfortunately, however, it is not unsurprising in light of the social psychological literature regarding implicit bias and subconscious stereotyping.

There are numerous studies illustrating Americans' propensity to associate blackness with criminality and negativity. One notable example of this is an experiment conducted in the Department of Psychology at Washington University of St. Louis.⁸⁴ In the study, 97 non-black participants were divided into three groups. Participants were tasked with viewing a series of pictures and determining whether the object depicted was a "gun" or a "tool." Before each depiction of a gun or tool, participants were shown a picture of either a white or black face. One group was told to actively ignore the race of the picture in its assessment of whether the object was a gun or a tool. Another group was instructed to engage in racial profiling, and thus actively use race as a factor in determining whether the object was a gun or a tool. A final group was given no instructions regarding race, and was only told that they would be shown a picture of a face followed by a picture of a gun or a tool.⁸⁵ This study found that participants were more likely to misidentify a tool as a gun after seeing a black face, and were more likely to misidentify a gun as a tool after seeing a white face.⁸⁶ Furthermore, the results indicated that the only way to decrease the prevalence of racial stereotyping was to increase the amount of time to process the pictures—as processing time decreased, stereotypical errors increased.⁸⁷ Clearly, this study has significant implications regarding Stand Your Ground legislation. Individuals invoking Stand Your Ground as a justification to exercise deadly force against another presumably do not have ample time to process the situation before determining whether or not to fire a gun. Thus, this study's findings suggest that those using deadly force in self-defense are more likely to misperceive a threat when the "aggressor" is black rather than white.

Joshua Correll conducted another highly relevant study to Stand Your Ground legislation. The researchers developed a simplistic videogame depicting black and white young men holding a gun, a wallet, an aluminum can, a cellphone, or a camera. To play the game, the participants were instructed to decide as quickly as possible whether the man depicted was holding a gun or another object. If he was holding a gun, they had to push the right button labeled "shoot." If he was holding another object, they had to push

⁸⁰ Burns, *supra* note 78.

⁸¹ Elisha Anderson & Gina Damron, *New Details Emerge on Renisha McBride's Accident in Hours Before Her Slaying*, DETROIT FREE PRESS (Nov. 12, 2013), <http://www.freep.com/article/20131111/NEWS02/311110088/Renisha-McBride-autopsy>.

⁸² Crimesider Staff, *Renisha McBride Update: Shooting of Mich. Teen who was Reportedly Seeking Help After Accident Sparks Outrage*, CBS NEWS (Nov. 8, 2013), http://www.cbsnews.com/8301-504083_162-57611475-504083/renisha-mcbride-update-shooting-of-mich-teen-who-was-reportedly-seeking-help-after-accident-sparks-outrage/.

⁸³ Mary M. Chapman, *Theodore Wafer Sentenced to 17 Years in Michigan Shooting of Renisha McBride*, N.Y. TIMES (Sept. 3, 2014), <http://www.nbcnews.com/news/us-news/renisha-mcbride-killer-gets-minimum-17-years-prison-n194366>.

⁸⁴ B. Keith Payne et al., *Best laid plans: Effects of Goals on Accessibility Bias and Cognitive Control in Race-Based Misperceptions of Weapons*, 38 J. EXPERIMENTAL SOC. PSYCHOL. 384, 388 (2002).

⁸⁵ *Id.*

⁸⁶ *Id.* at 389.

⁸⁷ *Id.* at 391.

the left button labeled “don’t shoot.”⁸⁸ The study employed a points system attempting to simulate the real-life stakes of self-defense. Participants received ten points for correctly shooting an armed target and five points for correctly refraining from shooting. They were penalized twenty points for shooting an unarmed target, but penalized forty points for failing to shoot an armed target.⁸⁹ The justification for this scoring system was that while it is a terrible mistake to shoot an unarmed target, it is a greater concern to ensure one’s own safety.⁹⁰ The results of this study were troubling. Participants shot at an armed target more quickly if he was black as opposed to if he were white, and decided not to shoot an unarmed target more quickly if he was white as opposed to if he were black.⁹¹ Furthermore, errors were made increasingly as the processing time decreased. Participants mistakenly shot unarmed targets more frequently when the subject was black, and failed to shoot an armed target more frequently when the subject was white. More detailed analysis revealed that if a target was black, participants required less certainty he was holding a gun before deciding to shoot him.⁹² The findings were not limited to white participants: both Blacks and Whites demonstrated this “Shooter Bias effect” in favor of white targets.⁹³ The significance of these findings to Stand Your Ground cases is apparent. The increased likelihood of individuals to shoot unarmed Blacks rather than unarmed Whites indicates that, in a heat-of-the-moment decision, an individual using deadly force in self-defense is significantly more likely to perceive a black person as dangerous.

There are numerous other studies that reinforce these propositions. For instance, there have been studies demonstrating that participants associate blackness with criminality,⁹⁴ and that Whites are more likely to associate black faces with hostility than white faces.⁹⁵ A leading method of studying racial stereotypes is the Implicit Association Test (IAT). In these studies, participants are told to press one key if they saw either a “white-sounding” name or a positive word, and another key if they saw either a “black-sounding” name or a negative word.⁹⁶ They then repeated this process, but this time linked black-sounding names and positive words and vice versa. There have been millions of IATs conducted, and 75% of those who have taken the race IAT have shown an implicit bias in favor of Whites.⁹⁷ These experiments reveal the disturbing reality that Blacks are far more likely than Whites to be misperceived as threats. This has frightening implications for Stand Your Ground legislation. Though many Americans believe we have entered a post-racial society, the notion that race is no longer a significant factor in American life and that individuals should see the world through a color-blind lens, these studies show that this narrative is a fiction.⁹⁸ Unfortunately, race remains of paramount importance in American society, and the racial divide in the Stand Your Ground debate is unsurprising. It is entirely logical for Blacks to be opposed to this legislation. As these experiments illustrate, “shoot-first” laws can have tragic consequences for the black

⁸⁸ Correll, *supra* note 50, at 1316.

⁸⁹ *Id.* at 1317.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 1325.

⁹³ *Id.*

⁹⁴ Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 889 (2004).

⁹⁵ Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat*, 14 PSYCHOL. SCI. 640, 643 (2003).

⁹⁶ Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1473-74 (1998).

⁹⁷ Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in A Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1571 (2013).

⁹⁸ EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 1 (3d ed. 2010).

community that Whites who preach colorblindness fail to realize. If Renisha McBride were white, it would be far more likely that she would be alive today.

IV. Dialogue not Diatribe: The Gun Rights Debate in a Post-Racial Society

The Trayvon Martin and Renisha McBride shootings catalyzed furious debate over the role of race in American society. Protesters across the country gathered to demand justice for the victims, alleging that both deaths were caused by racism.⁹⁹ The Trayvon Martin tragedy spawned the “I am Trayvon Martin” movement, with thousands of Americans demonstrating their sympathy for and solidarity with the victim and his family.¹⁰⁰ In the aftermath of the Renisha McBride shooting, activists questioned whether the response by law enforcement officials would have been more immediate and punitive if the shooter had been a black man and the victim a white woman.¹⁰¹ One protester observed: “It’s amazing that in 2013, we still see the lack of value of African American life.”¹⁰² State Representative Rashida Tlaib (Democrat – Detroit) declared: “racism is so alive.”¹⁰³ Even President Obama expressed his dismay with the situation in racialized terms, noting, “If I had a son, he’d look like Trayvon.”¹⁰⁴ Clearly, race has been at the forefront of the Stand Your Ground controversy. Due to the racial disparities in voter support for the legislation and the stereotypic link between Blacks and criminality, the salience of race in the debate is unsurprising.¹⁰⁵ Though the courage of activists to openly confront explosive issues of race is laudable, the approach has been largely unsuccessful. In order to defeat disparate impact legislation in a post-racial society, the narrative surrounding the legislative process must shift away from accusations of racism and towards an empathy centered on the tragic consequences of death. This section will first consider the significant role of the National Rifle Association (NRA) in the passage of Stand Your Ground legislation. A discussion of the NRA is imperative to the task of formulating advocacy strategies opposed to Stand Your Ground laws, as any attempt to effect repeal of such legislation would be met by strong opposition from the NRA. This section will next chart the proliferation of race-centric critiques of Stand Your Ground laws. Lastly, it will propose a new model for advocacy focused on emphasizing the destructive effects that the deaths of the victims of Stand Your Ground laws have on their families and communities.

A. The NRA’s Influence

There are many potential reasons for the recent proliferation of Stand Your Ground legislation. One factor, however, is undisputed—the influence of the National Rifle Association (NRA). This section will examine the impact of the NRA’s lobbying efforts. First, however, it is important to disclaim that the Michigan Self-Defense Act was not proposed as a result of NRA action. The Act’s drafter, Senator Rick

⁹⁹ See, e.g., Khalil AlHajal, *Renisha McBride Demonstrators Ask: What if She were a White Woman Shot by a Black Man?*, MLIVE (Nov. 7, 2013), http://www.mlive.com/news/detroit/index.ssf/2013/11/renisha_mcbride_demonstrators.html; Mallory Sofastaii, *Trayvon Martin Case Provokes Justice and Race Debate*, PBS (July 26, 2013), <http://www.pbs.org/newshour/extra/2013/07/trayvon-martin-case-provokes-justice-and-race-debate/>; Edward Upright & Zachary Faginson, *Trayvon Martin’s Parents Lead Protests Over Zimmerman Verdict*, REUTERS (July 20, 2013), <http://www.reuters.com/article/2013/07/20/us-usa-florida-shooting-idUSBRE96J03W20130720>.

¹⁰⁰ Kim Segal, *Protestors Declare ‘I Am Trayvon Martin,’ but Who Was He?*, CNN (Mar. 30, 2013), <http://www.cnn.com/2012/03/30/us/trayvon-martin-profile/>.

¹⁰¹ AlHajal, *supra* note 100.

¹⁰² *Id.*

¹⁰³ Oralandar Brand-Williams, *Hundreds Rally to Protest the Shooting of Renisha McBride*, THE DETROIT NEWS (Nov. 9, 2013), <http://www.detroitnews.com/article/20131109/METRO01/311090046>.

¹⁰⁴ Sam Stein, *Obama on Trayvon Martin Case: ‘If I had a Son, He’d Look like Trayvon’*, THE HUFFINGTON POST (Mar. 23, 2012), http://www.huffingtonpost.com/2012/03/23/obama-trayvon-martin_n_1375083.html.

¹⁰⁵ Lee, *supra* note 98, at 1561.

Jones, noted, “my motivation, at the time, came from 31 years of experience in police work . . . I think there were a number of groups out there that were pushing the legislation when it got passed in other states . . . I’ve been asked by the media numerous times: ‘Did the NRA come to you with this idea?’ No, they didn’t. I did it on my own. I wrote it [and] I came up with the idea.”¹⁰⁶ Though then-Representative Jones insists that the NRA did not influence him, the organization has played a prominent role in implementing Stand Your Ground legislation across the nation.

In a conversation with a representative from Democratic Michigan State Senator Steve Bieda’s office (9th district), it was asserted that the NRA has a substantial presence in Michigan state government.¹⁰⁷ The aide also noted that due to the two-term limit in the Michigan Senate, lawmakers do not have enough time to entrench themselves in office and thus may be more beholden to special interest groups.¹⁰⁸ It is sensible for state legislators to garner support from the NRA and other powerful lobbying groups, since backing from those organizations can help senators ensure a brighter political future for themselves. The reported NRA presence in the Michigan state house is in accord with reports of other states. The organization was massively influential in crafting and passing the nation’s first Stand Your Ground law in Florida.¹⁰⁹ After the Florida bill’s passage, NRA CEO Wayne LaPierre proclaimed it was the “first step of a multi-state strategy. There’s a big tailwind we have, moving from state legislature to state legislature. The South, the Midwest, everything they call ‘flyover land.’”¹¹⁰ The campaign has been wildly successful, as around half of the states now have some form of expanded Castle Doctrine codified into their state codes.¹¹¹ The NRA issued a statement hailing the passage of the Michigan Self-Defense Act, referring to the legislation as “a package of six self-defense bills backed by the National Rifle Association.”¹¹² Additionally, the organization continues to post information on its website about the status of the Act, and urges its members to contact local officials and express support for keeping the law on the books.¹¹³

Regardless of the NRA’s initial impact in inspiring then-Rep. Jones to draft the legislation, it is evident that any push to repeal the law will be bitterly contested by the NRA. This is extremely significant for the fate of Stand Your Ground legislation, as the NRA wields tremendous political influence. The group has upwards of four million members,¹¹⁴ and brings in annual revenues of over \$200 million.¹¹⁵ The NRA is not shy about utilizing its finances in political lobbying. In 2012, the organization spent \$32 million

¹⁰⁶ Interview with Rick Jones, *supra* note 74.

¹⁰⁷ Interview with Senator Steve Bieda’s Office (Nov. 7, 2013).

¹⁰⁸ *Id.*

¹⁰⁹ Michelle Jaffe, *Up in Arms over Florida’s New ‘Stand Your Ground’ Law*, 30 NOVA L. REV. 155, 179 (2005).

¹¹⁰ Adam Weinstein, *How the NRA and Its Allies Helped Spread a Radical Gun Law Nationwide*, MOTHER JONES (June 7, 2012), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground>.

¹¹¹ Erica Goode, *N.R.A.’s Influence Seen in Expansion of Self-Defense Laws*, N.Y. TIMES (Apr. 12, 2012), http://www.nytimes.com/2012/04/13/us/nra-campaign-leads-to-expanded-self-defense-laws.html?pagewanted=1&_r=0.

¹¹² NRA-ILA, *NRA-Backed Castle Doctrine Bills Become Law in Michigan* (July 20, 2006), <http://www.nraila.org/news-issues/news-from-nra-ila/2006/nra-backed-castle-doctrine-bills-beco.aspx>.

¹¹³ NRA-ILA, *Michigan: Oppose Anti-Self-Defense Resolution Before Washtenaw County Board of Commissioners* (Sept. 27, 2013), <http://www.nraila.org/legislation/state-legislation/2013/9/michigan-oppose-anti-self-defense-resolution-before-washtenaw-county-board-of-commissioners.aspx>.

¹¹⁴ See Katie Glueck, *NRA: 100,000 New Members after Sandy Hook Shooting*, POLITICO (Jan. 10, 2013), <http://www.politico.com/story/2013/01/nra-100k-new-members-after-sandy-hook-86001.html>; *but see* Josh Harkinson, *Does the NRA Really Have 4 Million Members?*, MOTHER JONES (Jan. 14, 2013), <http://www.motherjones.com/mojo/2013/01/nra-membership-numbers>.

¹¹⁵ Peter Robison & John Crewdson, *NRA Raises \$200 Million as Gun Lobby Toasters Burn Logo on Bread*, BLOOMBERG (Dec. 29, 2011), <http://www.bloomberg.com/news/2011-12-29/nra-raises-200-million-as-gun-lobby-toasters-burn-logo-on-bread.html>.

on federal elections alone.¹¹⁶ The NRA has also demonstrated a willingness to significantly contribute to state issues. For instance, the group was outspoken in its support for recalling two Democratic Colorado state legislators who voted in favor of gun-control legislation that centered on requiring universal background checks for all firearm sales and limiting on high-capacity magazines to a maximum of 15 rounds. The NRA spent over \$350,000 in its successful effort to depose the two state senators,¹¹⁷ and in the process sent a clear message to gun-control advocates that they would be met by powerful opposition should they continue to vote against the pro-gun agenda.¹¹⁸ In fact, the NRA's lobbying has been so effective that it has largely muted even the most prominent politicians. David Axelrod, a former senior advisor to President Obama, described President Obama's views on gun-control during his first term: "His view was never that we shouldn't move on these things. His view was that such moves would be largely symbolic because of the power of the gun lobby to stop them."¹¹⁹ While President Obama increased his support for gun-control legislation after the shootings in Newtown, Connecticut,¹²⁰ not even a tragedy of such epic proportions could halt the NRA's momentum.¹²¹

With its massive membership and funding and its entrenched political identity, the NRA represents a formidable opponent to those who would like to repeal Stand Your Ground legislation. The NRA, however, is not omnipotent. Though it boasts roughly five million members, that number constitutes less than two percent of the American populace. Furthermore, most Americans favor some form of gun control.¹²² Notably, despite NRA opposition to universal background checks, approximately 91 percent of Americans, including 74 percent of NRA members, are in favor of such measures.¹²³ Additionally, most American households do not include a gun owner.¹²⁴ These statistics indicate that the NRA, though financially strong, is politically vulnerable. In order to combat the proliferation of Stand Your Ground legislation, the discourse surrounding these laws must change. The remainder of this section will propose a new perspective on Stand Your Ground advocacy centered on empathy and victimization, an approach that would signify a break from the race-based adversariality that currently dominates the debate.

¹¹⁶ Chris Cillizza, *How the NRA Spent \$32 Million on Politics in 2012*, THE WASHINGTON POST (Jan. 30, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/01/30/how-the-nra-spent-32-million-in-2012/>.

¹¹⁷ Andrea Rael, *NRA Donates More Than \$350,000 to Colorado Recall Effort of Democrats Who Supported Gun Laws*, THE HUFFINGTON POST (Sept. 4, 2013), http://www.huffingtonpost.com/2013/09/04/nra-colorado-recall_n_3866397.html.

¹¹⁸ NRA-ILA, *Total Recall: Colorado Lawmakers Ousted in Historic Vote* (Sept. 13, 2013), <http://nra.org/legislation/state-legislation/2013/9/total-recall-colorado-lawmakers-ousted-in-historic-vote.aspx>.

¹¹⁹ Tim Dickinson, *The NRA vs. America*, ROLLING STONE (Jan. 31, 2013), <http://www.rollingstone.com/politics/news/the-nra-vs-america-20130131?page=3>.

¹²⁰ Tom Cohen, *Obama: 'Shame on Us' if Newtown Doesn't Bring New Gun Laws*, CNN (Mar. 29, 2013), <http://www.cnn.com/2013/03/28/politics/obama-guns/>.

¹²¹ Tony Dokoupil, *Almost a Year After Newtown, Does Anyone Care About Gun Control Anymore?*, NBC NEWS (Oct. 4, 2013), http://usnews.nbcnews.com/_news/2013/10/04/20821070-almost-a-year-after-newtown-does-anyone-care-about-gun-control-anymore.

¹²² Alex Seitz-Wald, *No, Really, Americans Support Gun Control*, SALON (Jan. 31, 2013), http://www.salon.com/2013/01/31/no_really_americans_support_gun_control/.

¹²³ Scott Clement, *90 Percent of Americans Want Expanded Background Checks on Guns. Why Isn't this a Slam Dunk?*, THE WASHINGTON POST (Apr. 3, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/04/03/90-percent-of-americans-want-expanded-background-checks-on-guns-why-isnt-this-a-political-slam-dunk/>; Scott Clement, *Obama: Overwhelming majorities support background checks*, THE WASHINGTON POST (Feb. 12, 2013), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/02/12/obama-overwhelming-majorities-support-background-checks/>; *Q: Would you support or oppose a law requiring background checks on people buying guns at gun shows?*, THE WASHINGTON POST (Apr. 12, 2013), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/03/12/National-Politics/Polling/question_10030.xml.

¹²⁴ *Guns Poll*, GALLUP, <http://www.gallup.com/poll/1645/guns.aspx#1> (last visited Dec. 16, 2013).

B. The Problems with Accusations of Racism

Many Americans assert that the United States, especially with the election of President Obama, has entered into a post-racial state.¹²⁵ Post-racial politics are synonymous with “color-blind racism,” in which Whites claim they do not acknowledge skin color in order to avoid discussions of race and white privilege.¹²⁶ The argument supporting post-racialism is that if a black man can achieve the most powerful and prestigious office in the country, then the vestiges of past racism have been rectified and America has become truly equal.¹²⁷ A 2012 Newsweek/Daily Beast poll verified the prevalence of this color-blind philosophy, as 60% of Blacks considered racism to be a “big problem” in America while only 19% of Whites shared this view.¹²⁸ Furthermore, 70% of Whites believed that Blacks had equal access to housing and jobs, and expressed far greater confidence that the criminal justice system treated Blacks and Whites equivalently.¹²⁹ Notwithstanding the idealistic color-blind rhetoric, racism remains prevalent throughout American institutions and causes disparate access to jobs, education, and housing.¹³⁰ The fact that many Whites can ignore the impact of race despite its manifestation in so many fundamental elements of society presents an ominous sign to those who would critique Stand Your Ground laws as racist. Though that analysis may be accurate, the unfortunate reality is that many Americans subscribe to color-blindness and thus recoil at the suggestion that legislation they supported has a racially disparate effect.

The vastly different reactions to the trial of George Zimmerman by Whites and Blacks illustrate how post-racialism colors the discussion of Stand Your Ground laws. According to a poll conducted by the Pew Research Center, 30% of white Americans expressed dissatisfaction with Zimmerman’s acquittal.¹³¹ By contrast, a whopping 86% of black Americans disagreed with the verdict.¹³² An *ABC News/Washington Post* poll found similar results, and added that while 81% of Blacks favored filing federal civil rights charges against Zimmerman, just 27% of Whites shared this view.¹³³ Finally, while 78% of Blacks believed the case raised important issues of race that need to be discussed, 60% of Whites felt that race was getting too much attention.¹³⁴ These statistics exhibit the problem of highlighting race in the political discourse; too many white Americans view conflict through a post-racial lens, causing them to respond negatively to race-centric critiques of social policy. Additionally, many of the influential proponents of Stand Your Ground law, including representatives of the NRA, hold positions that are openly hostile towards inserting race into the debate.

¹²⁵ Ian F. Haney Lopez, *Is the “Post” in Post-Racial the “Blind” in Colorblind?*, 32 CARDOZO L. REV. 807 (2011) (observing that after the election of President Obama, pundits have professed that America has entered into a post-racial state).

¹²⁶ Bonilla-Silva, *supra* note 98 at 53-54.

¹²⁷ Roy L. Brooks, *Making the Case for Atonement in Post-Racial America*, 14 J. GENDER, RACE & JUST. 665 (2011) (noting that the election of the first black president has caused commentators to proclaim America to be post-racial).

¹²⁸ *Newsweek/DailyBeast Poll*, THE DAILY BEAST, available at http://www.thedailybeast.com/content/dam/dailybeast/2012/04/06/Newsweek_DailyBeast_Race_In_America_Survey.pdf (last visited Dec. 16, 2013).

¹²⁹ *Id.*

¹³⁰ Mario L. Barnes, et al., *A Post-Race Equal Protection?*, 98 GEO. L.J. 967, 982-93 (2010); Trina Jones, *Anti-Discrimination in Peril?*, 75 MO. L. REV. 423, 427 (2010).

¹³¹ PEW RESEARCH CENTER, *Big Racial Divide over Zimmerman Verdict*, (July 22, 2013), <http://www.people-press.org/2013/07/22/big-racial-divide-over-zimmerman-verdict/>.

¹³² *Id.*

¹³³ *Vast Racial Gap on Trayvon Martin Case Marks a Challenging Conversation*, ABC NEWS/WASHINGTON POST (July 22, 2013), <http://www.langerresearch.com/uploads/1150a1TheMartinZimmermanCase.pdf>.

¹³⁴ PEW RESEARCH CENTER, *supra* note 131.

When asked to conjure up an image of the stereotypical NRA member, one likely thinks of a white male. Though the NRA does not release its membership demographics, logic suggests this would be the case. As outlined above, people of color are disproportionately in favor of gun control measures and are less likely to be gun owners. Furthermore, black NRA member Rick Ector noted that, at the NRA national convention in St. Louis, the crowd was overwhelmingly white: “By my own personal accounting, I met twelve (12) black persons in attendance . . . I may have missed a few but not many. Previously, I had attended the 2010 meeting in Charlotte. Sadly, I must report that both aforementioned events lacked significant participation by black people.”¹³⁵ Considering the extreme rhetoric espoused by leading figures in the NRA, the lack of Blacks in the group is unsurprising. Charlton Heston, in a speech given in his capacity as NRA vice president (he would later serve for five years as the organization’s president), explicitly linked gun rights with whiteness:

The Constitution was handed down to guide us by a bunch of those wise old dead white guys who invented this country. Now, some flinch when I say that. Why? It's true...they were white guys. So were most of the guys who died in Lincoln's name opposing slavery in the 1860s. So why should I be ashamed of white guys? Why is "Hispanic pride" or "black pride" a good thing, while "white pride" conjures up shaved heads and white hoods? Why was the Million Man March on Washington celebrated in the media as progress, while the Promise Keepers March on Washington was greeted with suspicion and ridicule? I'll tell you why: Cultural warfare.¹³⁶

Heston’s invocation of “white pride” while representing the NRA certainly does not send a strong message to people of Color that they are valued by the organization. The NRA’s new president, Jim Porter, has reaffirmed this message. In a speech given in upstate New York, Porter told his audience that the NRA was founded in New York State in 1871, by “some Yankee generals who didn’t like the way my Southern boys had the ability to shoot in what we call the ‘war of northern aggression.’ Now, y’all might call it the Civil War, but we call it the ‘war of northern aggression’ down South.”¹³⁷ By referring to the Civil War as the “war of northern aggression” and referring to Confederate soldiers as “my Southern boys,” Porter sent a strong message of Southern nostalgia, indicating that the NRA is an organization designed to serve the interests of white people. It is hard to imagine that Porter’s statements glorifying the Confederacy would inspire African Americans to join the NRA in large numbers. It is equally unlikely that the NRA, which considers itself to be “America’s longest standing civil-rights organization,”¹³⁸ would concede that its policies disparately affect Blacks. In responding to the Trayvon Martin controversy, Chris Cox, the executive director of the NRA Institute for Legislative Action (“NRA-ILA”), attacked Attorney General Eric Holder’s address to the NAACP which criticized Stand Your Ground legislation: “The attorney general fails to understand that self-defense is not a concept, it’s a fundamental human right. To send a message that legitimate self-defense is to blame is unconscionable, and demonstrates once again that this

¹³⁵ Rick Ector, *Is the National Rifle Association an Organization for Black People*, AMMOLAND (Apr. 24, 2012), <http://www.ammoland.com/2012/04/is-the-national-rifle-association-an-organization-for-black-people/#ixzz2Sj8lSxxn>.

¹³⁶ Charlton Heston, First Vice President, NRA, Speech at the Free Congress Foundation’s 20th Anniversary Gala (transcript available online at <http://www.vpc.org/nrainfo/speech.html>).

¹³⁷ John Cassidy, *The N.R.A.’s Challenge to America*, NEW YORKER (May 7, 2013), <http://www.newyorker.com/online/blogs/johncassidy/2013/05/jim-porter-and-the-nras-challenge-to-america.html>.

¹³⁸ NATIONAL RIFLE ASSOCIATION, <http://home.nra.org/> (last visited Dec. 16, 2013).

administration will exploit tragedies to push their political agenda."¹³⁹ Furthermore, NRA Executive Vice President Wayne LaPierre blamed the media for sensationalizing the Trayvon Martin killing.¹⁴⁰ The NRA's rebuke of the racialized treatment of the tragedy and its status as a group comprised largely of white conservatives illustrate that the organization will be unmoved by appeals to racism in discussions of Stand Your Ground policy.

An interview with Michigan State Senator Rick Jones provides further evidence that a race-centric critique of Stand Your Ground laws is ineffective. When asked whether there had been backlash to the Self-Defense Act in light of the Trayvon Martin and Renisha McBride shootings, Senator Jones stated

Absolutely not. My constituents still believe very much that you have the right to defend yourself from death, great bodily harm, or rape, and that you have an American right. [They] don't want the law changed. I believe that the media purposefully stirred up the Trayvon Martin death; it was just outrageous. They were claiming race. I thought it was outrageous that many in the media were saying that [Zimmerman] was Caucasian when he was [actually] Hispanic. I thought the media really blew that up.¹⁴¹

Senator Jones expressly rejects the notion that race had anything to do with the shooting of Trayvon Martin. Jones ignores the fact that 78% of Blacks felt the incident raised important issues of race in America and instead blamed the media for sensationalizing the story. The Senator's attitude towards the George Zimmerman trial exhibits the limitations of asserting that certain conduct or legislation is driven by racism. Subscribers to the post-racial ideology will dismiss the role of race as a construction of the "liberal media,"¹⁴² and it is clear from these reactions that bare allegations of racism in relation to Stand Your Ground violence and legislation are ineffective.

Furthermore, the Senator asserted that the shooter of Renisha McBride would almost certainly not be exonerated under the Self-Defense Act, and that the law was wholly unrelated to the incident:

When somebody does shoot, they don't shoot thinking of any particular law. They don't go shoot somebody and say "well I've got the right to shoot you because I read in the newspaper that the Stand Your Ground

¹³⁹ NRA-ILA, *NRA Responds to Attacks on Stand Your Ground Laws* (July 19, 2013), <http://www.nraila.org/legislation/federal-legislation/2013/7/nra-responds-to-attacks-on-stand-your-ground-laws.aspx>.

¹⁴⁰ Matt Gertz, *NRA's LaPierre Responds To Trayvon Martin Killing By Attacking The Media*, MEDIA MATTERS FOR AMERICA (Apr. 14, 2012, 1:00 PM), <http://mediamatters.org/blog/2012/04/14/nras-lapierre-responds-to-trayvon-martin-killin/183980>.

¹⁴¹ Interview with Rick Jones, *supra* note 74.

¹⁴² See, e.g., Aaron Rupar, *Rep. Tony Cornish blames 'liberal media' for hyping unrest following Trayvon Martin verdict*, CITY PAGES (July 15, 2013, 9:20 AM), http://blogs.citypages.com/blotter/2013/07/rep_tony_cornish_blames_liberal_media_for_hyping_unrest_following_trayvon_martin_verdict.php; Rem Rieder, *Column: Media got Zimmerman story wrong from start*, USA TODAY (July 14, 2013, 10:47 PM), <http://www.usatoday.com/story/news/nation/2013/07/14/zimmerman-trayvon-martin-nbc-news-column-rieder/2516251/> (reporting legislator's effort to blame media for racializing fatal incident); *Media's dishonest motives in Trayvon Martin case could end in riots*, GLENN BECK (July 11, 2013, 2:49 PM), <http://www.glennbeck.com/2013/07/11/medias-dishonest-motives-in-trayvon-martin-case-could-end-in-riots> (blaming media for racializing incident).

law allows me to do this.” That never enters their mind . . . I don’t think the law had anything to do with that shooting, absolutely nothing.¹⁴³

Senator Jones rejected the premise that Stand Your Ground legislation creates a shoot-first culture, and thus found that the Act’s effectiveness could be accurately judged by the results of the judicial process—those whose actions are not justified under the Self-Defense Act will simply go to jail. This assertion, however, is erroneous. One prominent counterexample to Senator Jones’ narrative is the shooting of two burglars in Texas by Joe Horn. Horn saw two men breaking into his next-door neighbors’ home and immediately called 911. During the 911 call, the operator instructed Horn thirteen times to remain inside his home because police officers would be arriving soon.¹⁴⁴ Instead, Horn responded by saying: “But I have a right to protect myself too, sir The laws have been changed in this country since September the first, and you know it.”¹⁴⁵ The law referred to by Horn was Texas’ expansion of the Castle Doctrine, a change that included the abrogation of a duty to retreat.¹⁴⁶ Just as a plainclothes officer arrived at the scene, Horn shot and killed both burglars, who were found with about \$2,000 in cash and a pillowcase full of jewelry.¹⁴⁷ A grand jury cleared Horn of all charges.¹⁴⁸ Clearly, Horn’s actions were at least partially motivated by his knowledge of the Stand Your Ground legislation.

Further, a preliminary report by the American Bar Association’s National Task Force on Stand Your Ground Laws have found that the “data fails to bear out the crime deterrent/crime-reduction rationale espoused by proponents of Stand Your Ground laws.”¹⁴⁹ The report surveyed multiple empirical studies that found that Stand Your Ground legislation had no deterrent effect on crime and may even lead to an increase in homicides.¹⁵⁰ Dr. Jerry Ratcliffe, the Chair of the Department of Criminal Justice at Temple University, asserted that “[i]f our aim is to increase criminal justice system costs, increase medical costs, increase racial tension, maintain our high adolescent death rate and put police officers at greater risk, then this is good legislation.”¹⁵¹ The studies conducted thus far demonstrate that Senator Jones’ assertion, that the Self-Defense Act plays no role in unjustified killing, is false.

It is likely that many instances of Stand Your Ground, including the shooting of Renisha McBride, would be deterred in the absence of the legislation. Rather than feeling emboldened by the law to retrieve his shotgun and confront her on the porch, McBride’s shooter may have simply called 911 and waited for the police behind the safety of his locked doors. Although it is true that McBride’s shooter was found guilty of murder, the conviction will not bring Renisha McBride back to her family. The key to curbing senseless tragedies is to act *ex ante* rather than *ex post facto*. The most obvious way to limit erroneous self-defense shootings in the future is to eliminate the law altogether, as a return to the common law Castle

¹⁴³ Interview with Rick Jones, *supra* note 74.

¹⁴⁴ *Anderson Cooper 360 Degrees* (CNN television broadcast Nov. 19, 2007, 10:00 PM), (transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0711/19/acd.01.html>).

¹⁴⁵ Ralph Blumenthal, *Shootings Test Limits of New Self-Defense Law*, N.Y. TIMES, Dec. 13, 2007, http://www.nytimes.com/2007/12/13/us/13texas.html?_r=3&oref=slogin&.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Brian Rogers & Dale Lezon, *Joe Horn cleared by grand jury in Pasadena shootings*, HOUS. CHRON. Jun. 30, 2008, <http://www.chron.com/neighborhood/pasadena-news/article/Joe-Horn-cleared-by-grand-jury-in-Pasadena-1587004.php>.

¹⁴⁹ AMERICAN BAR ASSOCIATION, *Preliminary Report and Recommendations*, 25, (Aug. 8, 2014), available at <http://www.abajournal.com/files/GunReport.pdf>.

¹⁵⁰ *Id.*

¹⁵¹ Amel Ahmed, ‘Stand Your Ground’ States See Increase in Homicides, AL JAZEERA AMERICA (Aug. 12, 2014), <http://america.aljazeera.com/blogs/scrutineer/2014/8/12/stand-your-groundstatesseeincreaseinhomicides.html>.

Doctrine will encourage shooters to retreat to safety whenever possible and shoot only as a last resort. Additionally, though the current opposition to Stand Your Ground laws is driven primarily by allegations of racism, race-centric challenges to these acts have proven to be unsuccessful.¹⁵² The remainder of this section will propose a new approach to Stand Your Ground advocacy grounded in empathy and the humanization of victims.

C. An Empathetic Solution to Stand Your Ground Advocacy

“Racism” is an extremely charged word in post-racial America. As outlined earlier in this Note, many white people subscribe to the idea of colorblindness, and allegations of racism upset this perspective. Referring to the legislation as “racism” immediately puts its supporters on the defensive. Rather than creating a dialogue between gun control and gun rights activists, blunt accusations of racism foreclose any possibility of productive intergroup compromise. As race theorist Diane Goodman observes, “When people are resistant, they are unable to seriously engage with the material. They refuse to consider alternative perspectives that challenge the dominant ideology that maintains the status quo. . . . Resistance stems from fear and discomfort.”¹⁵³ By leveling such harsh assertions against the legislation and those who support it, gun control activists are exacerbating the polarization of the debate.

Additionally, it is important for those contending that these laws are racist to recognize the complexity of white racial identity. As race theorist John Hartigan Jr. notes, there is no singular definition of whiteness, and differences within the white population impact discussions of race: “Hence one critical tack to deconstruct whiteness involves recognizing the complex and emotionally charged contests over belonging and difference that engage whites intraracially. Then recognize the important work these stereotypes perform in maintaining a prevailing image of whiteness as racially unmarked and removed from the blot of racism.”¹⁵⁴ Acknowledgment of one’s white privilege is often highly challenging. It requires significant self-reflection and the ability to accept that one’s successes did not stem solely from hard work but also from institutional advantage. Baldly accusing Stand Your Ground legislation of being racist leads to the insinuation that those who support such laws are racists. This strategy ignores the real culprit in instilling stereotypical associations of Blacks with criminality and fostering a culture where racially disparate legislation is popular: American society and history. As race scholars Stephanie Wildman and Adrienne Davis point out, “[t]o label an individual a racist veils the fact that racism can only occur where it is culturally, socially, and legally supported. It lays the blame on the individual rather than the forces that have shaped that individual and the society that the individual inhabits.”¹⁵⁵

Rather than entrenching preexisting opinions regarding the merits of Stand Your Ground legislation—which assertions of racism seem to cause—a better strategy would be for both sides to practice empathy and attempt to understand the other’s position rather than simply reject it. In his book, *The*

¹⁵² See, e.g., Sean Sullivan, *Four reasons why ‘Stand Your Ground’ laws won’t be repealed*, WASHINGTON POST (July 19, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/19/four-reasons-why-stand-your-ground-laws-wont-be-repealed> (discussing factors making repeal unlikely); Bill Cotterell, *Florida Bid To Repeal ‘Stand Your Ground’ Law Fails*, THE HUFFINGTON POST (Nov. 7, 2013, 10:54 PM), http://www.huffingtonpost.com/2013/11/08/stand-your-ground-repeal-fails_n_4237302.html (describing failed legislative efforts to repeal law).

¹⁵³ DIANE J. GOODMAN, PROMOTING DIVERSITY AND SOCIAL JUSTICE: EDUCATING PEOPLE FROM PRIVILEGED GROUPS 63 (2001).

¹⁵⁴ JOHN HARTIGAN JR., *Who Are These White People?: ‘Rednecks,’ ‘Hillbillies,’ and ‘White Trash’ As Marked Racial Subjects*, in WHITE OUT: THE CONTINUING SIGNIFICANCE OF RACISM 111 (Ashley W. Doane ed., 2003).

¹⁵⁵ Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 887-88 (1995).

Magic of Dialogue: Transforming Conflict into Cooperation, Daniel Yankelovich aptly describes the importance of empathy:

In the example of neighbors discussing school standards, if both the liberals and the conservatives in the group were less eager to fight for their convictions and more eager to grasp the other's viewpoints, they might have been able to understand where their neighbors were coming from and why they felt the way they did. The gift of empathy—the ability to think someone else's thoughts and feel someone else's feelings—is indispensable to dialogue.¹⁵⁶

Donald McCormick expands upon this idea:

Perspective taking and empathy can be useful in a conflict. One study of community organizers found that they were more effective if they could sometimes empathize with the power figures they opposed. . . . We can become better citizens when we can imagine how it feels to be in all sorts of different roles that make up our society and the world. The skills of empathy and perspective taking can help us get along with people who are different from us—different in gender, social class, sexual orientation, race, culture or politics.¹⁵⁷

An empathic approach to the Stand Your Ground debate would enable both sides to understand each other, and would allow gun control advocates to illustrate the unfortunate consequences this legislation has had without vilifying its proponents. If the gun control side opted to empathize with the gun rights advocates instead of taking an adversarial position, the gun rights supporters would potentially be more amenable to achieving compromise. Furthermore, if the gun rights advocates were confronted with dialogue rather than diatribe, they may be able to understand and acknowledge the racially disparate effect of Stand Your Ground legislation. The discussion surrounding Stand Your Ground laws should shift away from making race salient and towards the voices of the victims and their families. While racism is easy to deflect, particularly in a “post-racial” world, the tragic consequences of Stand Your Ground laws cannot be denied. Every victim is someone's child, someone's parent, or someone's sibling. Highlighting the devastating effects these deaths have on families and communities would create a dialogue surrounding these laws that everyone on both sides of the issue could relate to, and would help facilitate an environment in which these laws could be repealed.

Successful examples of this approach already exist and demonstrate how powerful the victim advocacy can be in effecting societal change. Perhaps the most prominent illustration of this strategy is Mothers Against Drunk Driving (“MADD”). Candy Lightner founded the organization in 1980 after her thirteen year-old daughter was killed by a repeat drunk driving offender.¹⁵⁸ The grassroots organization united victims of drunk driving tragedies in a common cause to change the cultural perception of driving under the influence and effectuate more stringent traffic safety legislation across the country. As described in an article commemorating the twenty-fifth anniversary of the organization's founding

¹⁵⁶ DANIEL YANKELOVICH, *THE MAGIC OF DIALOGUE: TRANSFORMING CONFLICT INTO COOPERATION* 43 (1999).

¹⁵⁷ DONALD W. MCCORMICK, *LISTENING WITH EMPATHY: TAKING THE OTHER PERSON'S PERSPECTIVE* 60 (1999).

¹⁵⁸ *History of MADD*, MADD, <http://www.madd.org/about-us/history> (last visited Dec. 16, 2013).

MADD blazed a trail that other organizations have since followed. They made hard, cold statistics come to life. They did not just say that drunk driving killed thousands and injured millions. They held up photographs – and described every nuance of their loved ones' lives – to prove it. As a result, a mountain of traffic safety and victims' rights legislation has been passed. Annual alcohol-related traffic fatalities have dropped from an estimated 30,000 in 1980 to fewer than 17,000 today. And, perhaps most important, society no longer views drunk driving as acceptable.¹⁵⁹

Today, MADD is active in all fifty states, as well as Puerto Rico and Guam,¹⁶⁰ and is widely recognized as a leading voice in the fight to end drunk driving.¹⁶¹ The gun control movement has begun to adopt some of these tactics through the group Moms Demand Action for Gun Sense in America (“MDAGSA”).

Shannon Watts founded MDAGSA in the wake of the shooting at Sandy Hook Elementary in Newtown, Connecticut.¹⁶² The organization considers itself to be a “non-partisan grassroots movement of American mothers demanding new and stronger solutions to lax gun laws, loopholes and policies that for too long have jeopardized the safety of our children and families.”¹⁶³ It emphasizes that it supports the Second Amendment right to bear arms, and lists universal background checks for purchases of guns and ammunition, bans on assault weapons that hold more than ten rounds, and policies at companies and public institutions that promote gun safety as a few of its primary objectives.¹⁶⁴ MDAGSA has grown rapidly—it reports over 100,000 members and chapters in every state.¹⁶⁵ Its most notable achievement occurred in September 2013, when Starbucks capitulated to pressure from the group to change its policy regarding the carrying of weapons in its franchises. Before the lobbying campaign, Starbucks allowed customers to bring loaded weapons into its stores.¹⁶⁶ Though Starbucks did not issue an outright ban on weapon possession, CEO Howard Schultz issued an open letter “respectfully requesting” that customers cease bringing firearms into Starbucks franchises.¹⁶⁷ This is a significant victory in the quest to change America’s gun culture, and demonstrates the impact of a group founded on the preservation of communities and families—an idea that both sides of a highly politicized debate can empathize with.

A final example of the value of empathy in shaping gun policy is the story of Sandy Phillips. Phillips’ daughter, Jessica Ghawi, was one of the twelve people murdered in Aurora by James Holmes in

¹⁵⁹ Laurie Davies, *25 Years of Saving Lives*, MADD (Fall 2005), <http://www.madd.org/about-us/history/madd25thhistory.pdf>.

¹⁶⁰ *Goals and Strategies*, MADD <http://www.madd.org/about-us/madd-goals.html> (last visited Dec. 16, 2013).

¹⁶¹ See, e.g., Steven P. Grossman, *Hot Crimes: A Study in Excess*, 45 CREIGHTON L. REV. 33, 42 (2011) (discussing influence exerted by MADD); Kelsey P. Black, Note, *Undue Protection Versus Undue Punishment: Examining the Drinking and Driving Problem Across the United States*, 40 SUFFOLK U. L. REV. 463, 480 (2007) (underscoring need to bolster penalties against drunk drivers).

¹⁶² Shannon Watts, *A Million Moms Against Gun Violence*, THE HUFFINGTON POST (Jan. 21, 2013, 8:50 AM), http://www.huffingtonpost.com/shannon-watts/million-moms-against-gun-violence_b_2519668.html.

¹⁶³ MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA, <http://momsdemandaction.org/about> (last visited Dec. 16, 2013).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Clare O’Connor, *Starbucks CEO Howard Schultz Tells Customers To Leave Guns At Home*, FORBES (Sep. 18, 2013, 7:01 AM), <http://www.forbes.com/sites/clareoconnor/2013/09/18/starbucks-ceo-howard-schultz-tells-customers-to-leave-guns-at-home>.

¹⁶⁷ Howard Schultz, *An Open Letter from Howard Schultz, CEO of Starbucks Coffee Company*, STARBUCKS (Sep. 17, 2013), <http://www.starbucks.com/blog/an-open-letter-from-howard-schultz/1268>.

2012. The tragedy spurred Phillips and her husband, who owned a shotgun, to advocate on behalf of stricter gun laws; both currently work full-time for the Brady Campaign to Prevent Gun Violence.¹⁶⁸ In her capacity as a lobbyist, Phillips met with then-House Majority Leader Eric Cantor:

I had Cantor in tears . . . When you start a conversation out and say: ‘You have a daughter. I had a daughter. Would you like to see her killed the way mine was killed?’ And then you go into a description. Cantor had his head down like he was saying, ‘I don’t want to hear this, I don’t want to hear this.’ And I said, ‘Imagine if it’s your daughter pinned down with nowhere to go, and she gets shot six times, and the sixth one takes her brain.’ . . . I knew he didn’t want to be there, but he did listen.¹⁶⁹

The fact that Phillips’s story profoundly affected Rep. Cantor, who received an “A+” rating from the National Rifle Association Political Victory Fund in 2012, exhibits the powerful influence empathy can wield in the political discourse.¹⁷⁰ Rather than use her position in the Brady Campaign to vilify Rep. Cantor, Phillips instead sought a dialogue with him where she was able to relate to him as a parent in order to convey the impact that gun violence has had on thousands of families across the country. Going forward, this is the strategy that should be employed in order to effect the repeal of Stand Your Ground legislation.

Although the gun control movement has begun to adopt a more empathic approach to advocacy, the current incarnations of this strategy will not alleviate the consequences of Stand Your Ground laws on communities of color. The strides made by MDAGSA are praiseworthy (if one is a gun control advocate, at least), but changing the open carry policy at Starbucks will not bring back Trayvon Martin. Universal background checks may be a sensible step in promoting safer gun ownership, but it would not have helped Renisha McBride, and there is no mention of Stand Your Ground on the MDAGSA website. By highlighting the mass shootings that have occurred, such as Newtown and Aurora, in her article describing the founding of the organization, Shannon Watts ignored the plight of black Americans.¹⁷¹ Every day it is Blacks who have to worry about being gunned down in Chicago and Detroit, Blacks who must fear being shot by the police, and Blacks who are sentenced to death for wearing hooded sweatshirts and eating Skittles.

Due to this emphasis on mass shootings, this Note proposes that a new, narrower-focused gun control movement should emerge to combat the proliferation of Stand Your Ground legislation. It is evident that the mainstream gun control movement is not focused on repealing Stand Your Ground laws, and that the current, racially charged attacks on the legislation are ineffective. Stand Your Ground opponents should thus fight the legislation on a narrow scope (that is, turn Stand Your Ground into a single-issue campaign distinct from the larger gun control movement), while incorporating the empathic techniques used by groups like Mothers Against Drunk Driving and exemplified by Sandy Phillips’ conversation with Rep. Cantor. This may be achieved through the media, in the form of interviews with and op-eds by victims of Stand Your Ground intended to humanize the issue, and by creating dialogue with community leaders, political figures, and powerful advocacy groups centered around the devastating

¹⁶⁸ Alec MacGillis, *This Is How the NRA Ends*, THE NEW REPUBLIC (May 28, 2013), <http://www.newrepublic.com/article/113292/nras-end-real-gun-control-movement-has-arrived>.

¹⁶⁹ *Id.* (quotations omitted).

¹⁷⁰ *The National Rifle Association Political Victory Fund Endorses Eric Cantor*, ERIC CANTOR (Oct. 5, 2012), <http://www.ericcantor.com/2012/10/the-national-rifle-association-political-victory-fund-endorses-eric-cantor>.

¹⁷¹ Watts, *supra* note 162.

consequences the legislation has had in destroying lives, families, and communities. Though avoiding discussions of race in the debate may be a less than ideal solution and will not work to eliminate the colorblind mythology plaguing American society, the unfortunate reality is that race salient critiques will only further entrench these laws. It must be asked whether forcing discussions about the racist impact of Stand Your Ground upon an apathetic (or hostile) opponent is worth risking the lives of young black Americans. An approach grounded in empathy and the voices of victims would transcend race and allow for an open, bipartisan dialogue, ultimately creating an environment in which these laws could be repealed.

V. Conclusion

As the recent outcry over the Renisha McBride shooting illustrates, the Michigan Self-Defense Act is a highly controversial subject. As discussed in Part I of this Note, the common law castle doctrine offered fairly robust protection for individuals employing deadly force in self-defense. Thus, a repeal of the Act would not leave Michiganders defenseless in the face of a violent attack. Despite the Renisha McBride tragedy, many gun rights advocates remain staunch in their support of the Act, and there is no serious momentum to effectuate its repeal. A significant reason for this failure is the aggressive insertion of race into the debate. This Note does not intend to suggest that race is not implicated by Stand Your Ground; by contrast, the evidence in Section Three indicates that the Self-Defense Act has a severely racialized impact. The assertions of racism that have emerged with the killings of Renisha McBride and Trayvon Martin, however, have alienated gun rights supporters and prevented any productive compromise from being achieved. Allegations that the Act is racist imply that those who support the legislation are also racist. This causes severe dissonance with the “post-racial” perspective adopted by many white Americans—since they fervently believe they are colorblind, it is inconceivable to them that legislation they support is racist. Thus, rather than continue with an ineffective and polarizing approach, racial justice advocates should attempt to connect with their opponents through empathic dialogue. Hopefully, if the two sides make a concerted effort to actively listen to and understand one another, it will create an environment in which real compromise can be achieved and senseless violence can be eliminated.