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July 1, 2020

Members of the General Assembly of Georgia

RE: Certain Mayors' Request to Repeal "Stand Your Ground Law"

Dear Members of the General Assembly:

I am writing you on behalf of my client, GeorgiaCarry.Org, Inc. and in response to a June 25, 2020, letter sent to you by 10 mayors of Georgia cities (the "Mayors"). The Mayors' letter is flawed in several respects and is based on a fundamental misunderstanding of history. I write, therefore, to point out those errors.

The Mayors' letter concerns whether there is, or ought to be, a duty to retreat when confronted with a violent attack. When there is no duty to retreat, that situation is sometimes colloquially called "stand your ground."

The Mayors seem to believe, incorrectly, that the lack of a duty to retreat is a recent feature of Georgia law. They are wrong. They use phrases like "upend centuries of traditional self-defense doctrine", "increases in firearms homicide", and "restore normalcy." These phrases all imply a belief that a duty to retreat historically existed and the lack of a duty to retreat is a recent invention. That simply is not the case.

In 1532, an act was passed in England to permit killing robbers and burglars. 24 Hen. VIII, c. 5 (Killing a Thief Act of 1532). Previous to that, killing in self-defense was something that required a pardon from the King, on the theory that only the crown had the power to use force against a subject. The Killing a Thief Act thus created a new concept, that a subject who killed a robber or burglar was acting with permission of the King.

In 1765, Blackstone wrote *Commentaries on the Laws of England,* which came to be viewed as the definitive source for the law at the time of the founding of our own nation. In *Commentaries,* Blackstone wrote that killing to stop a forcible felony was "justifiable," meaning the killer should be acquitted of all liability. On the other hand, killing during a "sudden affray," or mutual combat, was only "excusable," meaning the killer still had criminal liability, but to a lesser extent (i.e., manslaughter and not murder). But the killing could be justifiable, and not just excusable, if the killer could not escape the affray. Thus was born the concept of a duty to retreat, but it only applied when the killer was culpable in starting the fight in the first place. It had no application to the justifiable killing of a burglar or robber.

In 1784, Georgia adopted the common law of England as it existed on May 14, 1776. Act of 1784 (Cobb's Digest, p. 721). So, Georgia had the common law of England prior to its founding and

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continued with it after it became a state. It is simply wrong to imply that the lack of a duty to retreat is a novel concept for Georgia. Indeed, repealing that concept would "upend centuries of self-defense doctrine."

The lack of a duty to retreat is codified at O.C.G.A. § 16-3-23.1, and that Code section was enacted in 2006 (2006 Ga.L. 477, § 1). As early as 1898, the Supreme Court of Georgia found there was no duty to retreat before employing force to repel an attack. *Glover v. State,* 105 Ga. 597, 31 S.E. 584 (Ga. 1898). That was based on the Court's reading of the Penal Code then in effect. The *Gover* court observed the distinction between an unprovoked attack and a sudden affray. In 1984, the Supreme Court of Georgia observed, "The position of the court in *Glover* is in line with the majority view in this country...." *Johnson V. State,* 253 Ga. 37, 315 S.E.2d 871 (Ga. 1984).

The Mayors also imply there is some sort of relationship between the Ahmaud Arbery shooting in Brunswick and Georgia's lack of a duty to retreat. The Mayors do not elaborate on the connection, leaving legislative members to speculate. Regardless of one's perspective on that tragic incident, however, the lack of a duty to retreat does not come into play.

The Mayors also claim, "At least 30 people nationwide are killed each month as a result of Stand Your Ground laws." They do not cite any support for this statistic, and logically there cannot be any. If there is no duty to retreat, then the state cannot argue that the defendant did not retreat (such an argument would taint the jury). The state cannot introduce evidence of a failure to retreat, and the defense does not have a reason to introduce evidence of a lack of opportunity to retreat. In short, in a state with a lack of a duty to retreat, there never should be any discussion of a duty to retreat. There cannot, therefore, be statistics on how often a self defense killing would not have been justified if there had been a duty to retreat.

The Mayors claim, again incorrectly, "There are no studies that associate broadening self-defense laws with deterring crime." In fact, there is an extensive study that comes to that conclusion. *More Guns, Less Crime,* Lott, John R., Jr., University of Chicago Press, 3rd ed. (1998).

In summary, the major premise of the Mayors' letter is flawed, and other claims they make in their letter are demonstrably false. I urge you to disregard the Mayor's letter.

Sincerely,

John R. Monroe