



Written by [Bob Adelman](#) on July 5, 2017

Judge Declares Florida's Expansion of "Stand Your Ground" Law Unconstitutional

The [decision](#) by Florida Circuit Court Judge Milton Hirsch on Monday delighted opponents of the state's "Stand Your Ground" laws. Declaring on procedural grounds that changes just enacted into law by the Florida legislature were unconstitutional, Hirsch's decision "totally derails these changes to 'stand your ground' [law]," chortled Tamara Lave, law professor at the University of Miami's School of Law. She added that an appeal could put the matter before the state's Supreme Court.



The original "Stand Your Ground" law passed by Florida's legislature in 2005 opened the door for nearly two dozen other states to pass similar laws. They expanded the so-called "Castle Doctrine" — no duty to retreat from a threat of violence in one's home — to include anywhere outside the home. The previous "duty to retreat" was overridden and replaced with the right to defend oneself without first having to retreat from the threat of force.

In 2015 the state's Supreme Court ruled that any time a defendant seeks immunity from prosecution under the state's "Stand Your Ground" law, he or she "bears the burden of proof, by a preponderance of the evidence, to demonstrate entitlement to Stand Your Ground immunity at the pretrial evidentiary hearing." Hirsch explained:

This was entirely in keeping with settled practice. The law invariably places the burden of establishing entitlement to any form of immunity on the claimant, rather than placing the burden of establishing disentanglement to immunity on the opponent of the claim [the prosecution].

In June the Florida legislature decided to flip it, with prejudice. Hirsch wrote:

The statutory change [just signed into law by Florida's Governor Rick Scott] at issue here, however, displaces that law. It purports to shift the burden of proof at a pretrial hearing on a "Stand Your Ground" claim from the defendant to the prosecution; and to elevate that burden to require clear and convincing evidence [in that hearing that the defendant's claim to immunity shouldn't be allowed to stand].

Rather than challenge the issue frontally, Hirsch instead noted the difference between the U.S. Constitution and that of the state of Florida, and then used that difference to support his decision. After quoting from the powers granted to the state government in Florida's constitution, he explained:

The foregoing language is generally understood to mean that the legislature makes *substantive* law, but that the judiciary makes *procedural* law.... [Emphases added.]

Because questions of burden of proof are procedural rather than substantive, however, I necessarily find the demised legislative changes to be unconstitutional.

The "Stand Your Ground" law passed in Florida in 2005 says, "A person is justified in the use of deadly



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force and does not have a duty to retreat if: He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.” The law also empowered judges to dismiss charges against the defendant if they believed reasonable self-defense was used in the particular case.

Opponents were and still are outraged not only at the state’s overturning decades of established law but at what they perceive would turn Florida into a shooting gallery and result in an outbreak of vigilantism. One of them, predictably, is Lucy McBath, a leader of Michael Bloomberg’s Moms Demand Action for Gun Sense in America, who celebrated Hirsch’s ruling by declaring: “This is a notable setback in the dangerous expansion of ‘stand your ground’ laws.”

Hirsch’s ruling applies only to local courts and doesn’t need to be followed by others in the state. Florida Attorney General Pam Bondi indicated she would appeal Hirsch’s ruling. Richard Corcoran, the Republican leader of Florida’s House of Representatives, expects Hirsch’s ruling to be tossed: “It is the role of the legislature to write the laws that govern how Floridians may exercise their statutory and constitutional rights. The Florida House will continue to stand with ordinary citizens who exercise their right to self-defense.”

So does the bill’s author, Senator Rob Bradley, who asserted, “I would be surprised if this decision is upheld at the appellate level.”

Because the Florida constitution differs from the federal Constitution in its granting of judiciary powers, the appeal takes on extra significance with possible implications for other states that have adopted similar “Stand Your Ground” protections.

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