

represents over one thousand law enforcement organizations, with over 238,000 sworn law enforcement officers. NAPO often appears as amicus curiae in appellate cases of special importance to the law enforcement profession throughout America including before this Court.

The Southern States Police Benevolent Association (SSPBA) is an eleven state regional police association that promotes public safety, enhanced professional law enforcement and the rights of police officers. SSPBA works with and through its constituent organization, the North Carolina Police Benevolent Association (NCPBA), which has served the public and the North Carolina law enforcement profession since the late 1980s. NCPBA works to promote more effective law enforcement in North Carolina through legislation and advocacy to enhance public safety for all North Carolinians.

NAPO, PBA and the police community will be substantially impacted by the decision below and its preclusion of traditionally accepted use of force testimony.

Counsel for amici has obtained the consent of counsel for the parties to file an amicus curiae brief.

REASONS WHY AN AMICUS BRIEF IS DESIRABLE

This Court would benefit from an amicus curiae brief by NAPO and PBA because:

- 1) The decision of the Court of Appeals below departs from North Carolina law regarding the admissibility of expert testimony regarding the use of defensive force when engaging in self defense. NAPO and PBA have had substantial

experience in addressing many types of use of force issues including the use of expert testimony.

2) Unless reversed, the decision below will have an enormous negative impact on the ability of a police officer to enjoy a fair trial when accused of excessive force because, among other reasons, the Court below has substantially precluded use of force expert testimony.

3) This case presents issues of vital importance to NAPO, PBA and the law enforcement community throughout North Carolina because, among other reasons, expert testimony regarding use of force is most prevalent in criminal and civil cases against police officers – who have legal duties to use of force as a tool of public safety.

4) The Court of Appeals decision, if allowed to stand, will severely limit the ability of police officers to enjoy fair trials and hearings when officers are accused of using excessive force. Alleged excessive force is one of the most common charges made against police officers. Expert testimony regarding use of force is often needed to defend police officers in all types of legal forums and educate triers of fact regarding technical police matters.

5) The amicus brief will demonstrate the critical needs of the police community for triers of fact to be educated on use of force and other technical police issues where expertise is often critically necessary.

QUESTIONS OF LAW TO BE ADDRESSED

The amicus brief will address the following questions:

1. Whether Rule 702 of the North Carolina Rules of Evidence permits the admissibility of expert testimony addressing issues of defensive force?
2. Whether use of force testimony by expert witnesses is admissible because, among other reasons, *technical or specialized knowledge* is necessary to ascertain all factors for a complete and proper determination of whether force used is reasonable or excessive?
3. Whether the fundamental right of self defense includes the right to admit expert testimony addressing whether the force used was reasonable or excessive?

MOVANTS' POSITION WITH RESPECT TO THE QUESTIONS OF LAW

The Amicus brief will take the following position with respect to the questions of law:

1. Rule 702 and decisional law has historically permitted the admissibility of expert use of force testimony and those authorities should be reaffirmed to appropriately allow expert testimony to ensure fair trials for police officers.
2. Use of force expert testimony is necessary and admissible because, among other reasons, use of force cases often requires technical or specialized knowledge of force principles.
3. The fundamental right of self defense includes the right to admit expert testimony addressing whether the force used was reasonable or excessive.

CONCLUSION

Wherefore, Amicus Curiae NAPO and PBA respectfully move the Court for leave to file an amicus curiae brief.

/s/ J. Michael McGuinness
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** has been served this day via email to the email addresses listed below.

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This 12th day of August, 2014.

/s/ J. Michael McGuinness
J. Michael McGuinness