



## Use of Force & Castle Doctrine What it IS and what it is NOT!

*(Disclaimer-we're not lawyers. Any user of this information shall consult with an attorney for advice on interpreting the material contained herein before taking any action in reliance thereon, which could affect his or her own rights or the rights of others)*

This is the next in a series of Firearms Laws that are explored in depth so that you, the lawful gun owner, can be more informed and avoid running afoul of the law.

When Castle was signed into law, it was roundly criticized as being the “defense attorney’s best friend”, and a nightmare for prosecutors. After you read this you will understand that these claims were nothing more than media and anti-gun groups unfounded, agenda driven hyperbole.

We’ve spoken to a lot of folks, and we’re talking very likely several hundred, perhaps even a thousand, who don’t really understand Castle Doctrine. With the acquittal of George Zimmerman, Pennsylvanians might get the idea that one Castle Doctrine (Florida) is the same everywhere. NOTHING IS FURTHER FROM THE TRUTH! Florida’s Castle Doctrine is actually superior to Pennsylvania’s, because it addresses more issues, and takes discretion out of the hands of District Attorneys who don’t like Castle.

Please read this carefully, because even if you are found ‘not guilty’, you may, depending on the circumstances, still be looking at substantial legal costs, potentially 25 to 100 thousand dollars or more, to defend yourself from an overzealous prosecutor. That money will **never** coming back to you if you lose or you’re not covered by the incident with the Castle Doctrine Law.

**A brief history-** well, actually, it’s not that brief. It took the concerted efforts of grassroots organizations, **led by** FOAC, nearly 9 years to get the current iteration of Castle Doctrine passed and signed into law. Pennsylvania had a form of Castle Doctrine that covered home invasions, but said nothing about your deck, your porch, your driveway, or anywhere you might lawfully be and still intimidated you had a ‘duty to retreat’. District Attorneys had complete discretion on self-defense inside and outside of your home. A bill was written, by FOAC and the Pennsylvania Legislature, and finally, on June 28, 2011, Governor Corbett signed Act 10 into law. Unfortunately, Act 10 was still a compromise that **leaves, in our view,** excessive discretionary power in the hands of the DA’s across the Commonwealth thus continuing to limit self-defense rights in certain circumstances. If you’re interested in precisely how House Bill 40 was watered down, contact us.

*For those who think that paying their annual dues to a large national organization is sufficient to protect your right to keep and bear arms, and to defend yourself, the watering down of HB 40, which became Act 10, will come as an awakening.*

**Q.** Where can I find the complete text of Act 10 of 2011, regarding the use of force, lethal or less lethal, under **Pennsylvania’s Castle Doctrine**?

**A.** Pennsylvania Title 18, Act 10, and Public Law 48. The full text can be found here:

<http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2009&sessInId=0&billBody=H&billTyp=B&billNbr=0040&pn=3799>

-----Note: You can see a .pdf copy of Rep. Metcalfe's brochure at this link:

[http://www.repmetcalfe.com/Display/SiteFiles/15/Castle%20Doctrine%20Brochure%202011\\_1.pdf](http://www.repmetcalfe.com/Display/SiteFiles/15/Castle%20Doctrine%20Brochure%202011_1.pdf)

Act 10 can be viewed on the General Assembly's Website: [www.legis.state.pa.us](http://www.legis.state.pa.us) and we're printing out the entire Act for you below with our commentary.

*Editor's Note: It is our opinion that Pennsylvania's Act 10, as enacted into law, is not the strongest in the Nation. While Act 10 is a substantial improvement, the political process removed important language that would have made it better.*

**Q.** What did Act 10 add to the old Castle Doctrine law?

**A.** Act 10 expanded the right of the citizens to use lethal and less lethal force both inside and outside of their home. It extended the "**Castle Doctrine**" to your car, your deck, your porch, your driveway. You no longer have a "duty to retreat so long as you can do so in complete safety." This law added the concept of "**stand your ground**", anywhere you may lawfully be, again removing the 'duty to retreat' when faced with lethal force or serious bodily harm. But we encourage you to read the law and our comments. *It's not that simple.*

**Q.** May I use lethal or less lethal force if I am simply afraid?

**A.** NO! Bare fear is not now, nor will it ever be, an affirmative defense. You must be able to clearly show that you, or your loved ones, or your host if you are a guest in someone's abode, were in imminent danger of grave bodily injury, or death.

**Q.** Are you saying I can't be a Good Samaritan, and protect the life and limb of a complete stranger?

**A.** NO! Current 'Use of Force' laws do, specifically & narrowly, provide for citizen intervention to stop a kidnapping or a rape **or any act that could result in death or serious bodily injury**. Other courageous acts such as defending complete strangers still fall within Castle Doctrine and Stand Your Ground protections, depending on the circumstances. Defending a 3<sup>rd</sup> party contains many pitfalls and heightens ones' legal risks due to prosecutorial discretion!

**Q.** Can I be sued if I use force if I'm not prosecuted or found guilty of a crime?

**A.** NO! If in the opinion of the Courts, you were justified in the use of force at any level, you (and police officers, too) now enjoy immunity from civil suit---sort of! Scroll down to **§8340.2**. We're adding some personal observations there and here: *read this very carefully. You can find yourself in a courtroom, being sued by a violent career criminal or other reprobate that you were forced to defend yourself from. The law says you can recover your legal fees to defend yourself if sued civilly. Recover from whom? Unless you used force against a very wealthy criminal, you stand to recover NOTHING! And don't forget, your "immunity" is only if you win, and in a civil case, it only takes 51% of a preponderance of evidence for you to lose. There are no guarantees in a courtroom.*

We're going to continue this discussion about Castle, but we think it's prudent to tell you that while you have no duty to retreat, sometimes an escape is a good idea. A teacher of Personal Protection tells us that self-defense is a 4 step process. So before we go on about the law, and give you in depth commentary, let's review those 4 steps:

- **Escape**. IF at all possible, and in complete safety, one can get away this is the best choice.

- ***Conceal***. Hide, get out of the way, if you're in the broccoli aisle at your local grocers, turn into a broccoli.
- ***Cover***. Seek cover, and don't count on a car door to help you. A simple .22 rimfire projectile will go through two car doors. Use the engine, transmission, rear end, and wheels to your advantage if you're seeking cover behind a vehicle. Barricade yourself using cover material that is capable of stopping the threat in front of you.
- ***Engage***. When all else fails, and you have no option left but to use lethal force, or less lethal force, engage the threat until neutralized.

You may not have a chance to escape, conceal, or cover. Engage sounds easy, but it's not. Your "fight or flight" reaction is hard wired into your being. You will react, if you do use lethal force or less lethal force, exactly as you have practiced.

It's time to go to school now, so pay attention. We're going to lay out the entirety of Act 10 for you. We'll put some ***bold and italicized*** comments after sections that you should be familiar with.

Comments that are in bold, but not italicized, are the emphasis of the Pennsylvania legislature *We caution you that we are not lawyers, and you should go back to the top of the page and read the disclaimer very carefully.*

## **CRIMES CODE (18 PA.C.S.) - USE OF FORCE IN SELF-PROTECTION AND PROTECTION OF OTHER PERSONS, GRADING OF THEFT OFFENSES, LICENSES TO CARRY FIREARMS AND CIVIL IMMUNITY FOR USE OF FORCE**

**Act of Jun. 28, 2011, P.L. 48, No. 10**

**Cl. 18**

Session of 2011

No. 2011-10

**HB 40**

AN ACT

Amending **Titles 18** (Crimes and Offenses) and **42** (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing, in general principles of justification, for definitions, for use of force in self-protection, for use of force for the protection of other persons, for grading of theft offenses and for licenses to carry firearms; and providing for civil immunity for use of force.

The General Assembly finds that:----***a brief history lesson follows. It's worth a read.***

- (1) It is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.
- (2) The Castle Doctrine is a common law doctrine of ancient origins which declares that a home is a person's castle.
- (3) Section 21 of Article I of the Constitution of Pennsylvania guarantees that the "right of the citizens to bear arms in defense of themselves and the State **shall not be questioned.**"
- (4) Persons residing in or visiting this Commonwealth have a right to expect to remain unmolested within their homes or vehicles.
- (5) No person should be required to surrender his or her personal safety to a criminal, nor should a person be required to needlessly retreat in the face of intrusion or attack outside the person's home or vehicle.

**The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: *(Editor's note. Wherever words are within brackets [ ], that is language stricken from prior statute.***

Section 1. Section 501 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 501. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases, when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Believes" or "belief." Means "reasonably believes" or "reasonable belief."

"Correctional institution." Any penal institution, penitentiary, State farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

"Corrections officer." A full-time employee assigned to the Department of Corrections whose principal duty is the care, custody and control of inmates of a penal or correctional institution operated by the Department of Corrections.

"Deadly force." Force which, under the circumstances in which it is used, is readily capable of causing death or serious bodily injury.

"Dwelling." Any building or structure, **including any attached porch, deck or patio**, though movable or temporary, or a portion thereof, which is for the time being the home or place of lodging of the actor.

"Peace officer." Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to ~~[section 311 of the act of May 27, 1949 (P.L.1903, No.568), known as "The Military Code of 1949:"]~~ **51 Pa.C.S. § 508 (relating to active duty for emergency)**. The term "peace officer" shall also include any member of any park police department of any county of the third class.

**"Residence." A dwelling in which a person resides, either temporarily or permanently, or visits as an invited guest.**

"Unlawful force." Force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.

**"Vehicle." A conveyance of any kind, whether or not motorized, that is designed to transport people or property.**

Section 2. Section 505(b) of Title 18 is amended and the section is amended by adding a subsection to read:

§ 505. Use of force in self-protection.

\* \* \*

(b) Limitations on justifying necessity for use of force.--

(1) The use of force is not justifiable under this section:

(i) to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or-----**wait a minute! What does this mean? In plain English, if you are placed under arrest, even if you didn't do the crime, you can't defend yourself against a peace**

***officer for an act that you view as illegal. This law does not extend your right to stand your ground to defend against a peace officer in the performance of his duties, even if he has the wrong person.***

(ii) to resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(A) the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;

(B) the actor has been unlawfully dispossessed of the property and is making a reentry or recaption justified by section 507 of this title (relating to use of force for the protection of property); or

(C) the actor believes that such force is necessary to protect himself against death or serious bodily injury. -----***Again, in plain English, if you've been evicted, Castle doesn't apply to those who come to serve the eviction on you***

(2) The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or---***generally speaking, if you initiated a confrontation, or provoked one, Castle is NOT an affirmative defense.***

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating [~~or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take~~], except [that:

(A)] the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be [~~and~~

~~(B) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed].~~

(2.1) Except as otherwise provided in paragraph (2.2), an actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist:

(i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle. ---***this is your first criteria where Castle applies.***

(ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred. ---***this is one paragraph that really watered down House Bill 40. FORCEFUL ENTRY. Its yet another discretionary clause to allow the DA to review your case***

(2.2) The presumption set forth in paragraph (2.1) does not apply if:

(i) the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle, such as an owner or lessee;

(ii) the person sought to be removed is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used;

(iii) the actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity; or

(iv) the person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer. **—when you distill down 2.2, you can't use force (and are exempted from Castle as a defense) against someone who is entering or recovering their own property (a car or truck), a person who is removing their child or grandchild, if you are engaged in criminal activity, or if you take a potshot at a police officer acting under color of law, and you KNOW, or should have known he's a peace officer. MORE discretion, by the way, on the part of DA's. Defending your home against a SWAT team is probably a bad idea.**

(2.3) An actor who is not engaged in a criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would have a duty to retreat under paragraph (2)(ii) has no duty to retreat and has the right to stand his ground and use force, including deadly force, if:----- **read (i) through (iii). All 3 must be in place before lethal force can be used.**

(i) the actor has a right to be in the place where he was attacked;

(ii) the actor believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and

(iii) the person against whom the force is used displays or otherwise uses:

(A) a firearm or replica of a firearm as defined in 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms); or

(B) any other weapon readily or apparently capable of lethal use.---**yet another watered down paragraph. You MUST see the weapon, and that weapon must be apparently capable of lethal use. Compared to what? Do feet, fists, and elbows count? What about a really good quality metal pen or pencil? Who decides? The District Attorney, that's whom.**

(2.4) The exception to the duty to retreat set forth under paragraph (2.3) does not apply if the person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer.

(2.5) Unless one of the exceptions under paragraph (2.2) applies, a person who unlawfully and by force enters or attempts to enter an actor's dwelling, residence or occupied vehicle or removes or attempts to remove another against that other's will from the actor's dwelling, residence or occupied vehicle is presumed to be doing so with the intent to commit:

(i) an act resulting in death or serious bodily injury; or

(ii) kidnapping or sexual intercourse by force or threat.---**again, the concept of forced entry.**

**Does that mean if a bad guy walks into your home through an unlocked door, you cannot employ force? Who makes that call—the District Attorney!**

(2.6) A public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(3) Except as ~~required by paragraphs (1) and (2) of this subsection,~~ **otherwise required by this subsection,** a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.—**what this means is that you have a half second or less to decide how much force to use, up to and including lethal force. The DA has months to build a case against you.**

\* \* \*

(d) Definition.--As used in this section, the term "criminal activity" means conduct which is a misdemeanor or felony, is not justifiable under this chapter and is related to the confrontation between an actor and the person against whom force is used.

Section 3. Section 506 of Title 18 is amended to read:

§ 506. Use of force for the protection of other persons.—*this is the Good Samaritan rule. Read it carefully.*

(a) General rule.--The use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the actor would be justified under section 505 [~~of this title~~] (relating to use of force in self-protection) in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the actor believes that his intervention is necessary for the protection of such other person.

(b) [~~Exceptions~~] **Exception.**--Notwithstanding subsection (a) [~~of this section~~]:

~~(1) When the actor would be obliged under section 505 of this title to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person.~~

~~(2) When the person whom the actor seeks to protect would be obliged under section 505 of this title to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way.~~

(3) ~~Neither the actor nor the person whom he seeks to protect is obliged to retreat when in the dwelling or place of work of the other to any greater extent than in his own.],~~ **the actor is not obliged to retreat to any greater extent than the person whom he seeks to protect. ---District Attorneys have law clerks, investigators, and opinion makers on their team. This is yet another discretionary clause inserted by the DA's Association with the cooperation of a large national organization.**

Section 4. Section 3903(a), (a.1) and (b) of Title 18 are amended and the section is amended by adding a subsection to read:--*while interesting, this section really doesn't deal with your right to defend yourself.*

§ 3903. Grading of theft offenses.

(a) Felony of the second degree.--Theft constitutes a felony of the second degree if:

(1) The offense is committed during a manmade disaster, a natural disaster or a war-caused disaster and constitutes a violation of section 3921 (relating to theft by unlawful taking or disposition), 3925 (relating to receiving stolen property), 3928 (relating to unauthorized use of automobiles and other vehicles) or 3929 (relating to retail theft).

(2) The property stolen is a firearm.

(3) In the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm [~~and the receiver is in the business of buying or selling stolen property~~].

(4) The property stolen is any amount of anhydrous ammonia.

(a.1) Felony of the third degree.--Except as provided in subsection (a) **or (a.2)**, theft constitutes a felony of the third degree if the amount involved exceeds \$2,000, or if the property stolen is an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle, or in

the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

**(a.2) Felony of the first degree.--Theft constitutes a felony of the first degree if, in the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm and the receiver is in the business of buying or selling stolen property.**

(b) Other grades.--Theft not within subsection (a) [~~or~~], (a.1) [~~of this section~~] **or (a.2)**, constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:

(1) the amount involved was \$50 or more but less than \$200 the offense constitutes a misdemeanor of the second degree; or

(2) the amount involved was less than \$50 the offense constitutes a misdemeanor of the third degree.

\* \* \*

Section 5. The definition of "loaded" in section 6102 of Title 18 is amended to read:

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

"Loaded." A firearm is loaded if the firing chamber, the nondetachable magazine or, in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm which utilizes a detachable magazine, the term shall mean a magazine suitable for use in said firearm which magazine contains such ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment thereof as the firearm. **If the magazine is inserted into a pouch, holder, holster or other protective device that provides for a complete and secure enclosure of the ammunition, then the pouch, holder, holster or other protective device shall be deemed to be a separate compartment.**

\* \* \*

Section 6. Section 6109(m.3) of Title 18 is amended to read:

§ 6109. Licenses.

\* \* \*

(m.3) Construction.--Nothing in this section shall be construed to [~~permit~~]:

(1) **Permit** the hunting or harvesting of any wildlife with a firearm or ammunition not otherwise permitted by 34 Pa.C.S. (relating to game).

(2) **Authorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.**

\* \* \*

Section 7. Title 42 is amended by adding a section to read:

§ 8340.2. Civil immunity for use of force.

(a) General rule.--An actor who uses force:

(1) in self-protection as provided in 18 Pa.C.S. § 505 (relating to use of force in self-protection);

(2) in the protection of other persons as provided in 18 Pa.C.S. § 506 (relating to use of force for the protection of other persons);



(3) for the protection of property as provided in 18 Pa.C.S. § 507 (relating to use of force for the protection of property);

(4) in law enforcement as provided in 18 Pa.C.S. § 508 (relating to use of force in law enforcement); or

(5) consistent with the actor's special responsibility for care, discipline or safety of others as provided in 18 Pa.C.S. § 509 (relating to use of force by persons with special responsibility for care, discipline or safety of others) is justified in using such force and shall be immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the actor as a result of the use of force.

(b) Attorney fees and costs.--If the actor who satisfies the requirements of subsection (a) prevails in a civil action initiated by or on behalf of a perpetrator against the actor, the court shall award reasonable expenses to the actor. Reasonable expenses shall include, but not be limited to, attorney fees, expert witness fees, court costs and compensation for loss of income.— ***read this very carefully. You can find yourself in a courtroom, being sued by a violent career criminal or other reprobate that you were forced to defend yourself from. The law says you can recover your legal fees to defend yourself if sued civilly. Recover from whom? Unless you used force against a very wealthy criminal, you stand to recover NOTHING! And don't forget, your "immunity" is only if you win, and in a civil case, it only takes 51% of a preponderance of evidence for you to lose. There are no guarantees in a courtroom.***

(c) Definition.--As used in this section, the term "perpetrator" shall mean a person against whom an actor is justified in using force as provided by 18 Pa.C.S. § 505, 506, 507, 508 or 509.

Section 8. This act shall take effect in 60 days.---***the Act is now in effect. How well do you understand it?***

APPROVED--The 28th day of June, A.D. 2011.

TOM CORBETT

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**Firearm Owners Against Crime (FOAC)** is non-partisan, non-connected Political Action Committee organized to empower all gun owners, outdoors enthusiasts and supporters of the 2nd Amendment to the Bill of Rights of the U.S. Constitution and Article 1 Section 21 of the PA Constitution with the tools and information necessary to protect this freedom from transgression. Candidates for office are evaluated every election cycle, approved, placed on an FOAC voter guide and distributed throughout the region.