JOHN SPIROS

State Representative • 86th Assembly District

Assembly Bills 395, 396, and 397

September 21, 2017

Testimony from Rep. Spiros

Good afternoon, and thank you Chairman Ott and members of the Assembly Committee on Judiciary for allowing me to have the opportunity to share my testimony with you today regarding Assembly Bills 395, 396, and 397, which address the issue of rioting and provide penalties for participating in a riot.

Our country's first amendment rights and history of peaceful demonstrations have been an important cornerstone of American progress. However, over the last several years we have seen an increase in the number of high-profile, violent riots across the country that have terrorized our big cites, often leaving in their wake damage to businesses and personal property, not to mention the personal injuries and even fatalities that have been inflicted. And despite the increasing number of riots, Wisconsin is still one of just a handful of states that does not provide a definition for the term riot in statute or provide a penalty for participating in a riot.

Assembly Bill 395 would define a riot as "a public disturbance that involves an act of violence, as part of an assembly of at least three persons, that constitutes a clear and present danger of property damage or personal injury or a threat of an act of violence, as part of an assembly of at least three persons having the ability of immediate execution of the threat, if the threatened action would constitute a clear and present danger of property damage or personal injury". The bill would set the penalty for participating in a riot as a Class I felony. This definition was taken directly from the US Code, and is in line with the definition used in 16 other states.

Assembly Bill 396 would create a criminal penalty for anyone who blocks or obstructs the lawful use of a private or public thoroughfare or access to entrances and exits of any private or public building or dwelling while participating in a riot. The penalty for this offense would be a Class A misdemeanor, which is consistent with the penalty for committing the same crime in the course of an unlawful assembly.

In addition to the personal and property damage we have seen publicized in riots, we have also seen countless circumstances of rioters shutting down traffic on major roads. Not only does this create an inconvenience for everyone in the area, but also creates a safety risk as emergency vehicles are also prevented from passing through. This is an issue of public safety for everyone, including first responders, bystanders, and even the rioters themselves.

Assembly Bill 397 would prohibit participating in a riot while armed with a dangerous weapon, including a firearm, and would provide a penalty of a Class G felony. Riots already present an

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inherent danger to public safety, often resulting in personal and property damage. This risk is exponentially increased when those participating in the riot are armed with firearms.

During the riot that took place in Milwaukee in August 2016, an 18-year-old bystander was shot in the neck by an individual who was participating in the riot and armed with a firearm. During the same riot, firefighters were initially unable to put out fires at local businesses because of shots being fired at them and bricks being thrown at their trucks. Keep in mind that unlike police officers, firefighters aren't armed to protect themselves against this type of violence. In just one night during this riot, Milwaukee's ShotSpotter recorded 30 different instances of gunfire. This type of violent behavior creates a risk for those participating in and witnessing the riot, as well as our law enforcement officers whose job it is to keep the rest of us safe.

As a former law enforcement officer, my priority is public safety. That means protecting the safety of law enforcement, the safety of individuals who have to live and work in the neighborhoods where these riots take place, and the safety of those participating in the riots. Our goal should be to make sure everyone goes home safely at the end of the night, and addressing a problem like rioting, which has grown more and more prevalent in the last few years, is a big step in the right direction.

Many of the public safety bills I introduce are focused on prevention of crime. By setting parameters for what is and is not acceptable behavior during a demonstration, we can encourage demonstrators to remain peaceful, while also giving law enforcement officers and prosecutors the tools they need to properly address these crimes. These bills are in no way meant to suppress peaceful protests or assemblies, but rather to encourage that they remain peaceful.

Thank you again for allowing me the opportunity to share testimony in support of these bills, and I welcome any questions.

Van H. Wanggaard

Wisconsin State Senator

September 21, 2017

Testimony on Assembly Bills 395, 396, and 397

Thank you Chairman Ott and committee members for hearing Assembly Bills 395, 396, and 397 today. This package of bills addresses the growing popularity of riots and the damage that they perpetrate in our communities.

Current law does not specifically criminalize the act of rioting or some of the harmful actions that are often associated with it. In the wake of recent disruptions both in our state and across the nation, it is important to focus on keeping the public safe and holding those responsible accountable.

Wisconsin is one of few states that does not define riot in statute. Under Assembly Bill 395, a riot would be defined as a public disturbance that involves an act of violence, as part of an assembly of at least three persons, that constitutes a clear and present danger of property damage or personal injury or a threat of an act of violence, as part of an assembly of at least three person having the ability of immediate execution of the threat, if the threatened action would constitute a clear and present danger or property damage or personal injury. Engaging in such an activity would result in a Class I felony.

In addition to the property damage that occurs during these riots, shutting down major roadways has also become a popular tactic. This is an issue of public safety that affects not only those on the freeways and highways, but first responders trying to get to an emergency, innocent bystanders and even the rioters themselves. Assembly Bill 396 addresses this by classifying blocking a thoroughfare as a Class A misdemeanor.

For the safety of everyone, including those involved, we also need to put a penalty on being armed with a firearm while participating in a riot. Riots are already dangerous, and adding a deadly weapon into the mix only increases the likelihood of a tragedy. Assembly Bill 397 makes this a Class G felony.

Passing Assembly Bills 395, 396, and 397 will insure the safety of our communities and protect the public. This package has the support of several law enforcement groups. I encourage you to support the passage of these bills as well.

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Testimony to the Assembly Committee on Judiciary in opposition to Assembly Bill 395, relating to participation in a riot

September 21, 2017

Chairman Ott and other distinguished members of the Committee, it's a pleasure to be with you again today.

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign, a nonprofit here in Madison that's been in service now for 22 years, advocating for clean and open government and for a fully functioning democracy.

Crucial to our democracy is the right to freedom of speech and assembly. It is enshrined in the First Amendment of the U.S. Constitution, and it is enshrined in our Wisconsin Constitution as well. Article I, Section 3, of our state constitution says, "No laws shall be passed to restrain or abridge the liberty of speech or of the press." Article I, Section 4, says, "The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

This bill would restrain and abridge our free speech and assembly rights, and it would do so in a way that is expressly prohibited by the U.S. Supreme Court.

This bill would make it a felony to "riot," and it defines "riot" in a peculiar and unconstitutional way.

On the peculiar side, the bill states that a minimum of three persons assembled together would constitute a group that is capable of engaging in a riot. That seems like an awfully small number.

Then, to qualify as a riot, one of two things must happen, the bill says.

First, there must be "an act of violence by one or more persons" of the group. Note that all three persons (or even all 300 persons if the group was that big) could be found guilty even if just one of them engages in the violence. Plus, the act of violence doesn't have to do actual damage to people or property. It just has to constitute "a clear and present danger of . . . damage or injury to the property of any other person or to another person."

Second, under the bill, even if there is no act of violence at all, you can still be convicted of engaging in a riot so long as a member of the group issues a threat of violence. The bill states that it's a riot when there is "a threat of the commission of an act of violence by one or more persons that are part of an assembly of at least three persons having, individually or collectively, the ability of immediate execution of the threat, if the performance of the threatened act of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person to another person."

But what constitutes a "threat"? How explicit does it need to be? The U.S. Supreme Court has already weighed in on these questions. It has ruled on several occasions that vague threats of violence are protected under the First Amendment. In the landmark U.S. Supreme Court case *Brandenburg v. Ohio* in 1969, the court ruled in defense of First Amendment rights of a Klansman who spoke at a rally and urged vengeance, in a vague way, upon Jews and African Americans. The Court ruled that such speech was protected. It said the Klansman was prosecuted for "mere advocacy not distinguished from incitement to imminent lawless action," and that he was also wrongly prosecuted for "assembly with others merely to advocate the described type of action."

This bill has the same infirmities as the overturned Ohio law in the *Brandenburg* case. Nothing in this Wisconsin bill stipulates that the threat must be "imminent" or "likely to incite or produce" an act of violence. All it says is that at least one person in the group has "the ability" to immediately execute the threat. That's quite different. It also would criminalize "assembly with others" who are merely advocating a vague action.

For instance, one member out of a group of 300 could say, "If this injustice goes on much longer, we should go break some windows." Under the bill before you, the speaker—and indeed the other 299 people in the assembled group—could be guilty of a Class 1 Felony and face three and a half years in jail and be fined $10,000 because at least one of them, and probably most of them, could throw something through a window (thus meeting the bill's requirement to have "the ability of immediate execution of the threat"). But under *Brandenburg*, that is not sufficient, since the threat itself isn't "imminent."

Nor would this bill's prohibition of threats pass muster under other U.S. Supreme Court rulings, such as the 1969 case, *Watts v. United States*. In the *Watts* case, 19-year-old Robert Watts was convicted in the lower courts of threatening the President of the United States. Watts was speaking at a rally at the Washington Monument, and was vowing to resist the draft, saying: "I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle, the first man I want to get in my sights is LBJ." And Watts even made a gesture about aiming a rifle. But the U.S. Supreme Court overturned his conviction, saying it wasn't a direct threat but only "a kind of crude offensive method of stating a political opposition to the President." As Justice William O. Douglas wrote pointedly in his concurring opinion in *Watts*, "Suppression of speech as an effective police measure is an old, old device, outlawed by our Constitution."

That is what this bill is all about: suppressing speech, and suppressing assembly, as part of a police measure.

And there is evidence that this bill is designed to suppress speech and suppress assembly of a specific content, which makes it even more objectionable on constitutional grounds.

It seems designed to infringe upon speech and assembly that objects to police brutality. The authors of the bill, Representatives John Spiros and Senator Van Wanggaard, in a letter to their colleagues, said the bill was in response to "an increase in the number of high-profile riots across the country." Let's be clear here: Most riots over the last six decades in America – and recently -- have occurred in response to police brutality. The authors of this bill understand that. So this is content-based suppression of speech and thereby unconstitutional in this regard, as well.

This bill would group together those who are nonviolent with those who are violent.

It would countenance guilt by association.

And it's totally unnecessary.

Violent acts are already crimes.

Damage to property is already a crime.

Direct, imminent threats to specific persons are already crimes.

Failure to disperse is already a crime.

Disorderly conduct is already a crime.

Conspiracy is already a crime.

We don't need more criminal statutes that cover essentially the same ground.

Nor do we need criminal statutes that could be used to round up people who are nonviolently protesting police violence.

And by the way, if you want to reduce riots, try reducing police brutality.

I urge you to vote no on this unnecessary and unconstitutional bill.

I thank you for considering my views, and I welcome any questions you might have.