



First Amendment FOUNDATION

April 8, 2021

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The Senate Appropriations Committee
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: HB1/SB 484 before the Senate Appropriation Committee

I write to express the opposition of the First Amendment Foundation to HB1/SB484. In prior correspondence to House Committees, we have expressed our belief that House Bill 1 will have a chilling effect on freedom of speech and peaceable assembly, in violation of the First Amendment to the U.S. Constitution. I am certain you have heard and will hear more voices supporting this opinion.

However, I write to you also as a former U.S. Attorney for the Northern District of Florida, with over eighteen years of criminal trial experience as a federal prosecutor and criminal defense attorney. On March 10, 2021, when HB1 was considered by the House Judiciary Committee, Representative Fernandez-Barquin explained that the bill, as amended, would make it harder to arrest someone for rioting. He was asserting that the language of the amendment to HB1 addressed the fear that peaceful protestors might be wrongfully accused. He added that the revised version would make the offenses created by HB1 more difficult to prove.

From experience, I know that prosecutors are reluctant to bring charges that are difficult to prove. Charges that require a jury to find that multiple people acted with common intent are already challenging to prove with circumstantial and direct evidence. Whether it is three or nine people, mutual intent requires proof beyond a reasonable doubt of what multiple people were thinking at the time of act. Proving additional material facts such as "imminent danger" makes the bringing and proving of such felony charges all the more daunting.

A federal judge once advised me that I should charge my two best felony counts and keep my indictments simple. That was good advice. There are [numerous strong felony offenses](#) already in the Florida Statutes, which can result in significant sentences when a prosecutor presents solid evidence of violent acts. Prosecutors are reluctant to bring felony charges that are likely to result in acquittals.

This bill does not add a useful tool to a prosecutor's toolbox. Why struggle to pass a law that is likely to be deemed unconstitutional and is unnecessary and redundant given all the other criminal charges available? This law will not make Floridians safer. It will expose our state to expensive constitutional litigation for no good reason.

I urge you to vote against this bill for all of these reasons.

With best regards,



Pamela C. Marsh
President

cc: The Honorable Wilton Simpson, President, Florida Senate
Jim Baltzelle, Associated Press, Chair, First Amendment Foundation
Mr. Samuel Morley, General Counsel, Florida Press Association
Ms. Lisa Nellessen Savage, Chair, Florida Society of News Editors