



COLLEGE OF LAW

Stuart H. Smith Law Clinic and Center for Social Justice

Sent via electronic and snail mail

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February 10, 2021

RE: Opposition to HB 1/SB 484

Dear Speaker Sprowls and President Simpson,

I write on behalf of law professors¹ to express our grave concerns about the constitutionality of HB 1/SB 484, the Combatting Violence, Disorder and Looting and Law Enforcement Protection Act. I and the undersigned professors teach and research in the areas of constitutional law, criminal law and procedure, civil rights law, and other subjects. We have extensive experience litigating and advising counsel on rights to free speech and assembly, and the legal propriety of legislation that would restrict those rights. We believe that the proposed legislation interferes directly with the constitutional rights of Floridians and is drawn far too broadly to survive judicial scrutiny if challenged in court.

As you are doubtless aware, there is a long American tradition of public assembly, protest, and nonviolent civil disobedience. Since before the founding of the Republic, these activities — by transforming and mobilizing public opinion — have proven a crucial driver of social progress. From the Boston Tea Party to the women’s suffrage protests to the lunch counter sit-ins of the civil rights movement, individuals engaging in protest and civil disobedience have advanced the nation’s interests and provided a democratic check on the abuse of power. Sadly, however, the United States has fallen in the last decade from 22nd to 33rd on the annual Freedom in the World index, a ranking of political rights and civil liberties in 210 countries.

¹ See attached list of signatories.

HB 1/SB 484 is a step in the wrong direction. Particularly problematic are the bill's overbroad definitions of "committing a riot" and "aggravated rioting," which sweep in persons merely present at protests who do not themselves engage in violent conduct;² its definition of "encouraging a riot," which stretches beyond incitement of violent acts;³ and its definition of "mob intimidation," which is so capacious that any number of commonplace activities fall under it.⁴ These provisions are blatantly unconstitutional, since they severely restrict fundamental rights to speech and assembly and are not narrowly tailored to legitimate governmental interests. Simply put, HB 1/SB 484 outstrips the governmental mandate to protect public safety.

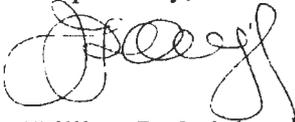
We are also troubled by the bill's waiver of municipal sovereign immunity and damage caps, which creates a perverse incentive for municipalities to over-police protests,⁵ and its efforts to shield individuals who injure or kill protesters from civil liability.⁶ These provisions are manifestly contrary to the public interest as well as morally unconscionable.

HB 1/SB 484 is particularly harmful in light of the current health crisis in prisons, where Covid-19 has spread nearly unchecked, and in view of Florida's long history of deliberate efforts to disenfranchise poor and minority voters. Under the bill, many innocent people who assemble in public to make their voices heard — including those protesting conditions uniquely detrimental to poor and minority communities — would face arrest, long periods of incarceration, and felony disenfranchisement. Even those arrested for minor, nonviolent offenses, such as unlawful assembly, would be required to spend time in jail.⁷

Law enforcement officials have more than enough existing laws at their disposal to prosecute individuals who engage in violent behavior. The only solutions to political unrest in the long run will be those which reckon with the stranglehold of wealthy interests on government, racial injustice, the decline of civic and community life, and the other serious structural problems preventing Floridians from enjoying full equality and dignity. HB 1/SB 484 is a bill that will only exacerbate those problems and likely have unintended consequences.

We urge you to withhold your support from HB 1/SB 484. We appreciate your service and would welcome your reply.

Respectfully,



William P. Quigley

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² See HB 1/SB 484 Section 15.

³ See HB 1/SB 484 Section 15.

⁴ See HB 1/SB 484 Section 8.

⁵ See HB 1/SB 484 Section 3.

⁶ See HB 1/SB 484 Section 18.

⁷ See HB 1/SB 484 Sections 8, 12-13, 15-17.

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Above is the list of law professors who have serious concerns about Florida HB1 as outlined in the letter above. Their institutions are listed for identification purposes only.