

Van H. Wanggaard

Wisconsin State Senator

TESTIMONY ON SENATE BILL 874 AND ASSMEBLY BILL 834

Thank you Mr. Chairman and committee members for today's hearing on Senate Bill 874 and Assembly Bill 834 relating to no-knock search warrants and certain expenditures of federal moneys by first class cities.

Nationally, and among certain pockets of Wisconsin, no-knock search warrants have been demonized by the anti-police mob. These opponents have willfully cast no-knocks in a bad light through misunderstanding and willful misstatements of facts. Last month, in a misguided move that will undoubtedly hamper and endanger law enforcement in Milwaukee, the Milwaukee Fire and Police Commission prohibited the use of no-knock search warrants by Milwaukee police officers. This bill corrects that bad decision.

It's important to set the facts straight on no-knock warrants. No-knocks warrants are not heavily prevalent in Wisconsin. Just like nearly every search warrant, no-knocks must be approved by a court of law. And they aren't given out like Pez candy. In fact, there is a much higher bar for no-knock warrants than a regular search warrant.

Under the unanimous Wisconsin Supreme Court decision in *State v. Cleveland*, authored by Justice Shirley Abrahamson, the court held that in order to approve a no-knock warrant, the warrant application must "set forth special circumstances with sufficiently particularity to show reasonable cause to believe that circumstances presently exist which justify a no-knock entry." Even if this high hurdle is cleared, under the same case, the court also held that if the circumstances changes and a law enforcement has new information changing the circumstances justifying a no-knock approval, then law enforcement must follow the typical knock-and-announce rule.

Wisconsin's no-knock law is further clarified by the US Supreme Court case, *Richards v. Wisconsin*, another unanimous case, authored by liberal stalwart Justice John Paul Stevens, and argued before the court by then-Attorney General Jim Doyle. In *Richards*, the US Supreme Court held that law enforcement must show "a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime, by for example, allowing the destruction of evidence."

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This high bar protects the constitutional rights of every day citizens, while still allowing police officers to enforce the law. Despite this well-thought out balance, and the decades of practice, the Milwaukee Fire and Police Commission has prohibited its officers from using this important, live-saving, evidence preserving tool.

Simply put, no-knock warrants save lives, preserve evidence, and protect constitutional rights. This bill ensures that no community can cave to the anti-police mob and prohibit their use as Milwaukee has done.

The other part of the bill deals with the federal windfall that Milwaukee has received from COVID-funds, almost \$400 million.

As you are undoubtedly aware, Milwaukee is in the midst of a major crime wave. For the second the year in a row, Milwaukee set a record for murders, had car thefts at a greater rate than Chicago, and a record number of drug overdoses. There are a lot of factors that have caused this, but primary among those causes is the consistent cutting of Milwaukee's police department.

This bill requires Milwaukee to spend the same percentage of its ARPA funds on law enforcement as in its general budget. I think this is common sense and would help Milwaukee tackle its crime pandemic. Law enforcement is one of the few very core responsibilities of local governments, and this bill recognizes that.



Department of Administration
Intergovernmental Relations Division

Cavalier Johnson
Mayor

Sharon Robinson
Director of Administration

Kimberly Montgomery
Director of Intergovernmental Relations

City of Milwaukee Testimony on SB 874, Relating to: no-knock search warrants and certain expenditures of federal monies of first class cities.

Thank you, Chairman Wanggaard, and fellow members of the Senate Committee on Judiciary and Public Safety, for the opportunity to provide testimony on SB 874.

The City of Milwaukee opposes SB 874, relating to no-knock search warrants and certain expenditures of federal monies of first class cities. This legislation is another prime example of supposed “local control” being overridden by the Legislature. The Milwaukee Fire and Police Commission, after significant community and law enforcement input, and public discussion, voted in a public meeting on Nov. 18th to outlaw no-knock search warrants. The intention under Wis Stat §62.50 is for cities of the first class to have a community led board of commissioners who may proscribe policies and standards for the police and fire departments. Milwaukee’s independent Fire and Police Commission determined that it was appropriate to ban the Milwaukee Police Department from executing no-knock search warrants in the City of Milwaukee. Reversing this decision through AB 834 is a move in the wrong direction and is a direct disregard of the authority and independence of Fire and Police Commissions throughout the State.

It is also important to note that the Milwaukee Fire and Police Commission’s decision to ban no-knock search warrants only applies to the Milwaukee Police Department. Other law enforcement agencies can still request and execute no-knock warrants in the City. The County Sherriff’s Office, Department of Justice or a Federal law enforcement agency can all conduct no-knock search warrants within city limits.

As for the second component of the bill, the City of Milwaukee currently spends over \$280 million in general purpose funds on the Milwaukee Police Department, over 40% of the City of Milwaukee’s entire budget. SB 874 would require Milwaukee to spend the same percentage of our Federal relief dollars on law enforcement as well, an additional \$157.6 million of ARPA funds. This is yet again another example of the Legislature spurning the idea of “local control” by directing only the City of Milwaukee on how it should use its federal relief money. Additionally, under direction from the United States Congress, through the American Rescue Plan Act of 2021, it is prohibited for the Wisconsin State Legislature to place an additional conditions on the City’s federal relief dollars such as that proposed in AB 834.

H.R. 1319 American Rescue Plan Act of 2021 states:

31 CFR 35.12(d) **Additional conditions.** A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government

or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

As that provision of the American Rescue Plan Act clearly states, a state may not place additional conditions or requirements on distributions to local government units. AB 834 seeks to disregard the authority of the United States Congress and place requirements upon only the City of Milwaukee as to how we choose to invest our rescue plan dollars into our own community. For all of these reasons, the City of Milwaukee is opposed to the passage of AB 834. Thank you for your consideration.

Please contact Jordan Primakow, Intergovernmental Relations Division, jprima@milwaukee.gov or 414-708-6433, for any questions.



Wisconsin State Lodge *Fraternal Order of Police*



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February 17, 2022

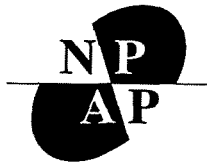
Wisconsin Fraternal Order of Police Testimony in Support of Senate Bill 874

Senate Committee on Judiciary and Public Safety

Thank you, Senator Wanggaard and fellow committee members, for the opportunity to provide testimony in support of Senate Bill 874. My name is Mark Sette, and I am the Vice President of the Wisconsin Fraternal Order of Police. The Fraternal Order of Police is the world's largest organization of sworn law enforcement officers, with more than 364,000 members in more than 2,100 lodges. The Wisconsin State Lodge is made up of more than 2,600 members in 23 lodges throughout the state. We are committed to improving the working conditions of law enforcement officers and the safety of those we serve through education, legislation, information, community involvement, and employee representation.

AB834 would restrict a county or municipality, a board of fire and police commissioners, a sheriff or chief, or mayor or common council from restricting a law enforcement officer's ability to seek or execute an unannounced or "no-knock" search warrant. No-knock search warrants are a necessary tool for law enforcement when certain dangerous circumstances arise. As someone who has executed hundreds of search warrants in my career, including no-knock search warrants, I can assure you that the safety of civilians and law enforcement personnel is the top priority when planning these complex operations. Although it is preferable to mitigate threats that would justify a no-knock warrant, sometimes it is unavoidable to meet an immediate law enforcement objective. There has been much discussion about no-knock search warrants after recent high-profile incidents but no collective data about their use and their outcomes. We previously testified in support of legislation that would collect data on the use of no-knock warrants throughout the state. The data collected through the passage of that bill would be instrumental in fostering an honest, fact-based discussion about their prevalence and application. Arbitrarily banning the use of no-knock warrants, as we have seen in at least one city in Wisconsin, only endangers the lives of officers and citizens. This bill is imperative to preserve this tool for officers putting their lives on the line to arrest violent criminals and maintain consistency throughout our state.

Thank you again for the opportunity to testify in support of this bill, and I am happy to answer any questions you may have.



National Police Accountability Project

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OPPOSE SB 874 – An Act That Will Prohibit Local

Democratic Decisions About When No-Knock Warrants Can Be Executed

Written Comment by National Lawyers Guild-National Police

Accountability Project, Lauren Bonds, Legal Director

Senate Committee on Judiciary and Public Safety– Thursday,

February 17, 2022

Dear Members of the Judiciary and Public Safety Committee,

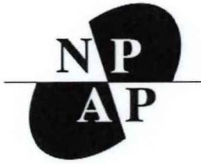
Thank you for the opportunity to provide written comment on this important issue. The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We strongly oppose the passage of SB 874. This bill would prohibit local police agencies and elected officials from limiting the inherently dangerous tactic of executing a warrant without knocking and announcing first.

No-knock raids are an immensely dangerous policing tactic broadly authorized by Fourth Amendment jurisprudence that are almost never justifiable as a net benefit to public safety. Police departments that execute no-knock raids create a high risk of death, injury, and emotional trauma for the occupants of the home they are searching.

The execution of no-knock warrants generally entails a ‘dynamic entry’ into the premises, breaking down doors, detonating explosive devices, and handcuffing residents while forcing them to lie prone on the floor.¹ All of these features make the execution of a no-knock raid create a high risk of physical injury to occupants.

In addition to the risks related to paramilitary tactics used to accomplish no-knock raids, warning-less entries into a person’s home add another level of danger for all parties involved. When police break into a person’s home without knocking and

¹ ACLU, *War Comes Home: The Excessive Militarization of American Policing* at 40 (2014), Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, Cato Institute at 4-5 (2006).



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announcing, the resident can reasonably mistake the officers for burglars or other violent intruders—and be more likely to return force.²

These features make no-knock warrants dangerous for both civilians and officers. Over a five-year period, at least 81 civilians died in no-knock raids across the country and there have also been a number of documented deaths of police officers while executing no-knock warrants.³

Given the high risk of death and serious injury associated with the execution of no-knock warrants, it is no surprise that dozens of police departments and city councils have decided to regulate their use in order to protect their officers and constituents from harm.⁴ SB 874 will prevent local police executives and elected bodies from reducing unnecessary violence.

In addition to the significant human costs created by unrestricted no-knock warrants, this bill also exposes municipalities to costly legal bills and settlements. Fourth Amendment jurisprudence authorizes the execution of no-knock warrants in limited circumstances.⁵ However, but the broad discretion afforded to officers in seeking a no-knock warrant and often minimal judicial oversight of application requests create a likelihood that warrantless entries can lead to constitutional violations.⁶ These breaches of the Constitution can result in costly settlements and

² Brian Dolan, *To Knock or Not to Knock? No-Knock Warrants and Confrontational Policing*, 93 St. John's L. Rev. 201, 206 (2019).

³ Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES, Mar. 18, 2017, <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>; The Justice Collaborative Institute, *End No-Knock Raids* (2020).

⁴ Tessa Duvall and Darcy Costello, *In cities and states across the U.S., Breonna's Law is targeting deadly no-knock warrants*, THE COURIER JOURNAL, Mar. 17, 2021, <https://www.courier-journal.com/story/news/local/breonna-taylor/2021/03/12/spread-of-breonnas-law-across-us-has-become-policy-legacy/4642996001/>.

⁵ *Richards v. Wisconsin*, 520 U.S. 385 (1997).

⁶ L. Joe Dunman, *Warrant Nullification*, 124 WV L Rev __, 30-34 [2021] [forthcoming], available at <https://ssrn.com/abstract=3805913> [collecting reported instances nationwide where judges spent minimal or no time at all reading warrant applications before signing them]; Mary Nicol Bowman, *Full Disclosure: Cognitive Science, Informants, and Search Warrant Scrutiny*, 47 Akron L Rev 431, 442-43, 461-63 [2014] [citing studies that show judges typically spend “between two and three minutes per warrant application” and that the warrant application process primes judges to defer to the police narrative of the case, which can often be incomplete



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judicial verdicts. SB 874 takes away local lawmakers ability to limit liability and minimize their exposure to legal risks.

We urge you to not pass SB 874. Thank you for the opportunity to provide comment on this important issue.

or misleading]; Richard Van Duizend, L. Paul Sutton & Charlotte A. Carter, *The Search Warrant Process: Preconceptions, Perceptions, and Practices* 26 [1984] [same].)

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