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Chairman Spiros and Members of the Assembly Criminal Justice and Public Safety Committee, thank you for allowing me to submit testimony on Assembly Bill 617.

Under current law, “a person who engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance commits the crime of disorderly conduct and is guilty of a Class B misdemeanor.” AB 617 increases the penalty for 947.01 (aka “disorderly conduct”) statute to a Class A misdemeanor if a person commits the crime of disorderly conduct while wearing a mask to conceal his or her identity. Under current Wisconsin statute the penalties for disorderly conduct are a Class B misdemeanor: a fine not to exceed \$1000, or imprisonment not to exceed 90 days, or both. With this bill, a Class A misdemeanor increases those penalties to: a fine not to exceed \$10000, or imprisonment not to exceed 9 months, or both.

When drafting this legislation I worked to prioritize protecting 1st Amendment rights against legal challenges. To be clear, AB 617 **limits conduct, not speech**. AB 617 provides significant exemptions, including:

- The mask is worn because of religious practices or beliefs.
- The mask is worn as part of a holiday costume during a holiday season.
- The mask is worn to provide protection from the elements.
- The actor is engaged in a trade, employment, or a sporting activity and the mask is worn for physical safety of the actor, or because of the nature of the trade, employment task, or activity.
- The mask is worn as part of a theatrical production, masquerade ball, parade, ceremony, or celebration.

In 1999, I was a trade advisor at the World Trade Organization (WTO) in Seattle. I was a witness to the chaos that ensued. Masked agitators whose goals were public destruction, violence, and anarchy essentially shut down a large part of the city of Seattle. Originally, hosting the World Trade talks was sold as a positive to the city. Unfortunately, the masked anarchists caused mass-disruption and left a bad impression of the Northwest – I don’t want that to happen to Milwaukee or Wisconsin. In the 20 years since then masked actors have become more brazen and dangerous. Peaceful and law-abiding protests have been thrown into chaos: Charlottesville VA, Berkley CA, Portland OR. Terms such as “ANTIFA,” “Milk-Shaking,” and “Doxing” have become more mainstream.

As law-abiding citizens, we all lose if masked offenders are allowed to cause chaos and public destruction. With high-profile events such as the Democratic National Convention 2020 and other events coming to Wisconsin, it is important to provide law enforcement the tools to address these circumstances. It is my sincerest hope that we can look at AB 617 to help improve security and protect 1st Amendment rights.

Thank you again for holding this hearing on AB 617 and allowing me to testify. I am happy to answer any questions you may have.



January 9, 2020

**Testimony of ACLU of Wisconsin
In Opposition to Assembly Bill 617**

The American Civil Liberties Union of Wisconsin is a non-partisan, non-profit organization working to protect civil liberties—including the freedom of speech and the right to demonstrate. The fight for freedom of speech has been a bedrock of the ACLU's mission since the organization was founded in 1920, driven by the need to protect the constitutional rights of conscientious objectors and anti-war protesters.

AB 617 increases the disorderly conduct charge from a class B to a class A misdemeanor if the person charged is wearing a mask. This can result in fines up to \$10,000, imprisonment up to 9 months or a combination of the two. (A Class B misdemeanor carries a fine of up to \$1,000, imprisonment of up to 90 days or both.)

We understand that there is a difference between exercising one's First Amendment right to assemble and breaking the law. Wisconsin has robust laws that protect the public from criminal activity, even if it occurs in the context of valid protest including disorderly conduct.

We are opposed to this bill because it is aimed at chilling the speech of those protesters with whose message the government disapproves. The government may have a legitimate interest in regulating "disorderly conduct," but that interest does not extend to a sentence enhancement for those that engage in it while wearing masks to conceal their identity unless there are special circumstances at hand. There could be many legitimate reasons for covering one's face, including religious reasons or wearing an expressive costume. People might also fear identification and adverse action by employers or law enforcement for expressing their views.

In a recent [article](#), Jay Stanley, senior policy analyst with the ACLU talks about how the spread of facial recognition is likely to raise the stakes around anti-mask laws:

"The more accurate and widespread the technology becomes; the more situations will arise where people won't want to show their faces. The cameras that increasingly surround us will allow the police to cheaply and easily identify us — and who we're with, even if part of a giant crowd.

It gets even worse when we realize that we can be identified that way repeatedly, with our presence recorded in databases and automated algorithms used to flag repeat protest activity, associational patterns, or anything else the authorities might want to know.

And of course it's not just the authorities who can use face recognition. Even if we restrict its use by government, private parties who have access to photographs of a controversial event will be able to use them to identify us and harass us, retaliate against us at work, or worse."

Furthermore, civil disobedience is and has always been an important part of protesting activity. Many protesters are prepared to go to prison for their protesting activities. There is a big difference between protesting with a risk of 90 days in jail and a \$1,000 fine and the risk of 9 months and \$10,000. Many people will not be able to take that risk, and the only reason to apply this enhancement to people wearing masks is to suppress the messages expressed by a particular group of people.

This proposed bill does nothing to make Wisconsin safer or address breaking the law. AB617 only says that wearing a mask while committing the crime that actually caused harm is somehow worse than committing the underlying crime in the first place. Wisconsin already has laws that address crimes such as disorderly conduct or destruction of property, therefore passing this bill does nothing to protect the rights of Wisconsinites.

The ACLU has no desire to protect lawbreakers from identification and prosecution. However, we must maintain the freedom to publicly express ourselves while protecting our privacy in a world increasingly engineered to take it away from us. American laws should allow people the freedom to speak anonymously, especially when expressing non-mainstream views. We urge you to vote no on this bill.