



SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Judiciary
May 7, 2025
Assembly Bill 88

Chairman Tusler and members of the Assembly Committee on Judiciary – Thank you for giving me the opportunity to provide testimony for Assembly Bill 88, a bill that seeks justice for victims of riots.

Riots, contrary to peaceful protests, create an inherent danger to public safety and usually result in damage to personal and public property. We saw the destructive riots a few years ago in several metropolitan areas, including right here in Madison and Kenosha. Taking a walk down State Street, one would see busted doors and windows of businesses, products stolen, and a smashed statue of a Civil War hero. Several business owners, employees, and citizens had their lives upended.

This legislation is cut and dry. You break it, you fix it. Rioters need to be held accountable and pay for their actions, not the taxpayers and businesses. AB 88 creates a pathway for restitution to be paid to those who suffer injury or loss as a result of a riot.

Additionally, this legislation prohibits government officials from interfering with law enforcement in their ability to quell riots and vandalism to ensure public safety.

I appreciate the opportunity to testify on this legislation.



DAN FEYEN

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To: The Assembly Committee on Judiciary
From: Sen. Dan Feyen
Re: Assembly Bill 88

Hello Chair and members of the committee, thank you for taking the time to hear testimony on AB 88.

Peaceful protests are a cornerstone of our public discourse and will always be protected under the first amendment, but a line needs to be drawn when those protests go from being peaceful to being destructive and violent. We have witnessed a growing number of riots in recent years and seen the long road to recovery that many individuals and businesses must navigate in the aftermath. Stricter penalties are needed to deter protesters from crossing that line from protest to property destruction, vandalism, arson, and physical violence.

AB 88 gives clearer definition of a "riot" by matching state statute to federal definitions, while also making it a Class H felony to intentionally commit violence while participating in a riot. This bill makes it clear that promoting, organizing, or encouraging a riot is also a crime, making that a Class I felony.

This bill also seeks to make sure victims of these crimes are paid back for the damages done. In short, if you break it-you buy it. Under SB 94, anyone who suffers physical injury or has their property damaged or destroyed can bring civil action against the people or organizations who caused damage or provided material support with the intent to cause damage. This makes sure that the perpetrators are fully brought to justice and the victims are made whole.

Lastly, this bill makes sure law enforcement oversees the law enforcement response to a riot. AB 88 prohibits government officials, such as elected officials that are not law enforcement, from interfering with the arrest of rioters or any action taken to quell a riot or vandalism. Letting law enforcement do their job will stop rioting quicker, before it grows out of control, resulting in additional damage and violence.

Thank you very much for holding a public hearing on this bill.

May 7, 2025

Chair Tusler, Vice-Chair Jacobson, and Honorable Members of the Assembly Committee on Judiciary:

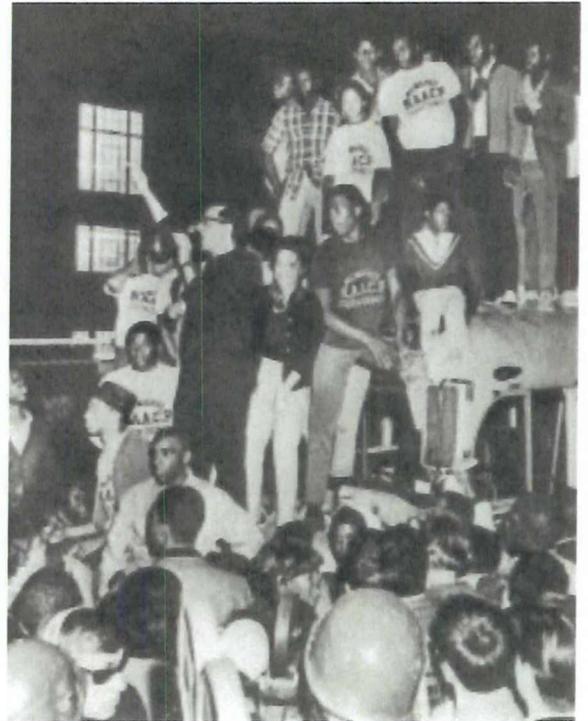
The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 88.

“[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

AB-88 is part of an ongoing trend of attempts by government authorities to limit and intimidate speech, in ways that exceed the boundaries of the First Amendment set out by the U.S. Supreme Court in cases like *Brandenburg*. Over the past 8 years, we’ve seen over 300 bills introduced nationwide targeting the most impactful protests in recent memory—from racial justice activists calling for an end to police killings, to campus protests, to indigenous and environmental justice protesters demanding no more pipeline construction.

This trend echoes the racist history of federal anti-protest legislation passed in 1968 following mass civil rights demonstrations, marches, and rallies, including the Anti-Riot Act and the Civil Obeyance Act. Those laws’ legislative histories specifically name civil rights leaders, including Martin Luther King, Jr. as targets, and their subsequent use largely lives up to their terrible origins. The Anti-Riot Act was most famously used to prosecute the Chicago 7—anti-war, counter-culture, pro-youth, and anti-racist activists—and Bobby Seale.

Wisconsin has a robust history of using protest to bring about positive change. Had AB-88 been law during some of the most pivotal moments in our state, the very people who shaped our history for the better may have been deterred from using their voice or even felonized under this harsh and overly broad legislation.



Vel Phillips on hood of a bus next to Father Groppi surrounded by Milwaukee NAACP Youth Council protesters. *University of Wisconsin-Milwaukee, "Phillips, Vel | March on Milwaukee - Libraries Digital Collection."*



In August 1966, two dozen migrant farm workers, mostly Mexican marched from Wautoma, Wisconsin to the Capitol in Madison to draw attention to their demands for a minimum wage for agricultural workers of \$1.25 per hour, improved housing, public bathrooms for workers, and a meeting with the Governor's Committee on Migratory Labor. *Wisconsin Labor History Society*

Although the co-sponsorship memo states this bill about paying for destruction caused by violent riots, the real effect of this bill is to chill vigorous speech, especially in public protests. If AB-88 were enacted, most reasonable, law-abiding Americans may well think twice before joining a protest, rally, or demonstration. In an era of historic activism, that response isn't just unconstitutional, it's fundamentally un-American.

We already have remedies for vandalism and criminal destruction of property in the Wisconsin criminal statutes. Persons who are victims of tortious conduct already have the

ability to sue for damages to their property. Judges already have the ability to award restitution and impose monetary penalties which can be used to compensate victims.

This bill criminalizes what it calls "riots" – but the definition of a riot is far from the image of a riot involving looting and burning and chaos that you might have in your minds. The definition of riot requires only three people in a group, only one of whom engages in a violent action to damage property. In other words, 3 children together and one decides to throw a rock on a dare from the others which breaks a window, is a riot under the definition of the statute. But the statute, goes even further – a threat to riot is a crime, "I dare you to throw that rock" – even if the rock is never thrown. And then it goes further yet to make "inciting" that dare a crime – inciting is "urge, promote, organize, encourage, or instigate other persons."



In 1972, hundreds marched from Keshena, Wisconsin to Madison to protest the sale of Menominee land despite treaty restrictions. *University of Wisconsin-Madison Archives.*

This vague and largely unlimited statute gives a free pass to over-zealous policing of protest activities. When marchers protesting wrongful action by their government shout "No Justice – No Peace" – will that protected speech be seen as encouraging or instigating someone (and it only takes one person in a group of three) to take action against a piece of property, however insignificant? The right to assemble is threatened when the law can prosecute an entire group for the actions of a single individual in that group.



Crowds continued to protest restrictions on collective bargaining for public employees at the Wisconsin State Capitol in Madison on March 12, 2011. REUTERS/Darren Hauck

Not only does this bill encourage overzealous policing of protected protest activity, but the statute creates a civil cause of action, a hammer to wield against not just someone who might have painted a slogan on a wall, but also against anyone who might be in that net of “encouragers.” This civil remedy includes not just the costs of repairing property, but additional compensatory damages, plus emotional distress, plus attorney’s fees.

Further, the bill also strips local governments of the ability to regulate police conduct at protests. Local leaders often set guidelines to ensure that law enforcement responds to protests in ways that prioritize safety, de-escalation, and accountability. AB-88 takes away that power, leaving communities vulnerable to aggressive law enforcement tactics that have the potential to escalate violence at demonstrations.

The ACLU of Wisconsin urges committee members to oppose AB-88. Dissent is patriotic.



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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To: Rep. Tusler, Chairperson
Members, Assembly Committee on Judiciary
From: R.J. Pirlot, Executive Director
Date: May 7, 2025
Subject: Assembly Bill 88, civil actions relating to riots or vandalism

On behalf of the Wisconsin Civil Justice Council – a group of 16 business associations working together on civil liability matters – we respectfully ask you to oppose Assembly Bill 88, legislation which create a new civil action for injuries or damages resulting from riots or vandalism.

AB 88 would create a new civil action which may be brought by any person who suffers injury or loss due to an act committed in violation of an existing law prohibiting damage to property or a new statute prohibiting rioting. This new civil action could be brought against any person who committed the violation and against any person or organization that provided material support or resources with the intent that the material support or resources would be used to perpetrate the offense.

If successful, the plaintiff – in addition to recovering compensatory damages – could recover damages for emotional distress and attorney fees.

AB 88 is a departure from current law because it allows compensation for emotional distress arising from property damage. Under current law, emotional distress damages awards are typically limited to situations involving personal injuries, and in all cases where the emotional distress is proven to be severe. The Wisconsin Civil Justice Council respectfully urges the Wisconsin Legislature to not make exceptions to when Wisconsin generally allows for emotional distress damages.

Moreover, AB 88 is an attorney fee-shifting statute, representing a departure from the American rule, where each party pays its own attorney fees. Fee-shifting is typically reserved for claims that have an employment or consumer protection aspect. Fee-shifting statutes can encourage protracted litigation or filing of claims which may not normally be brought.

Under current law, a cause of action already exists for those suffering injury or loss. AB 88 is an unneeded addition to the law and contains departures from long-standing Wisconsin norms.