

March 14, 2023

RE: Veto House Bill 40 (Prevent Rioting and Civil Disorder)

The Honorable Roy Cooper
Delivered by Email

Dear Governor Cooper:

On behalf of the **29 undersigned organizations**, we request that you **veto N.C. House Bill 40 (Prevent Rioting and Civil Disorder)**.

While HB 40 purports to be about preventing riot and disorder, it is an unnecessary and excessive measure that will suppress free speech and further criminalize Black and Brown communities. It is retaliatory – rooted in a false narrative that protests are dangerous and reflect animus towards political expression disfavored by its proponents.

The legislature first attempted to amend several statutes related to rioting in 2021 (HB 805) as part of a national wave of legislation in response to protests for racial justice and police accountability that have swept across the country.¹ Following the veto of HB 805, the legislature proposed HB 40 (Prevent Rioting and Civil Disorder) in February 2023. Like its predecessor, this bill would give broad discretion to law enforcement officers, empowering them to punish those rightfully criticizing their behavior and misconduct. The impact of its implementation will clearly worsen the mass incarceration and disenfranchisement of Black and Brown individuals.

Under North Carolina law, “riot” is already defined too broadly, and HB 40 would increase penalties for riot-related bodily injury or property damage, as well as for “urging” a riot. This bill suffers from both overbreadth and vagueness. The language pertaining to “urging someone else to engage in a riot” is similar to language in the federal anti-riot statute. Both the 9th Circuit and 4th Circuit Court of Appeals have ruled those provisions to be unconstitutional.² **Not only are overbroad and vague laws unconstitutional, but they open the door to selective enforcement from the very institutions being criticized in protests.**

What’s more, HB 40 would require a judge, rather than a magistrate, to set bail for a person charged with rioting or looting. An individual may be held up to 24 hours before seeing a judge, when only a handful of other charges are treated this way.³

HB 40 would also allow a person whose property is damaged by a riot to sue for damages up to three times the value of the property, creating an excessive punishment that would disproportionately burden low-income North Carolinians. Legislative efforts would be better spent on providing equitable compensation to small business owners from communities of color who have been disproportionately affected by the COVID-19 pandemic and are still economically recovering.

Statements referring to protestors as “rioters” and “looters” further a divisive and racially biased narrative

¹ U.S. Protest Law Tracker, International Center for Not-For-Profit Law. 2023

² *United States v. Rundo*, 990 F.3d 709 (9th Cir. 2021) & *United States v. Miselis* (4th Cir. 2020)

³ G.S. 15A-534.1 Page 1 § 15A-534.1

against Black, Indigenous, People of Color (BIPOC) protesters. No one, whether they are Black, Brown or white, should have to fear the government imposing harsh penalties for exercising their right to protest. **With the passage of this bill, North Carolinians must be willing to risk the immediate and long-term loss of their freedom, health, bodily autonomy, and economic security at the broad discretion of law enforcement and prosecutors when exercising their right to assemble.**

The right to protest is one of our country's founding principles, enshrined in the First Amendment. Protests founded this country. Protests have paved the way for ending segregation, bringing troops home from war, and universal suffrage and equal rights for every American. Protest holds elected officials accountable and uplifts the voices of the most marginalized groups in our country.

For the same reasons you vetoed House Bill 805 in 2021⁴, we urge you to veto House Bill 40.

Respectfully,

ACLU of North Carolina	NC League of Conservation Voters
Action NC	North Carolinians Against Gun Violence
Advance Carolina	North Carolina Asian Americans Together
Common Cause North Carolina	North Carolina Association of Educators
Democracy North Carolina	North Carolina Black Alliance
Down Home North Carolina	North Carolina Council of Churches
Education Justice Alliance	North Carolina Justice Center
El Pueblo Inc	North Carolina NAACP
Emancipate NC	North Carolina Voters for Clean Elections
Friends of Earth	Planned Parenthood South Atlantic
Hillsborough Progressives Taking Action	Pro-Choice North Carolina
Forward Justice Action Network	Recidivism Reduction Educational Services, Inc
League of Women Voters of North Carolina	7 Directions of Service
Missing Murdered Indigenous Women Coalition of NC	Southern Coalition for Social Justice
NC Counts Coalition	

⁴ Governor Cooper Veto of HB 805 (2021)