



Brian Austin: Crackdown on protesters not a Wisconsin value



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As I write this piece, I find myself in a strange position. I really don't like to sing, and don't gravitate toward activities that require me to do so. Yet these days I care about singing so much that I am willing to be arrested for it. It's not that I want to be arrested, but it appears to be a likely outcome at this point.

The other curious element to this surreal situation is that I am a police officer. And a lawyer.

As the 2011 protests surrounding Act 10 ended, a small group of activists continued to come to the Capitol over the noon hour each day to sing labor and politically themed songs. This group, known as the Solidarity Sing Along, was by all accounts peaceful and respectful. Their formula was simple and disciplined: Anyone was welcome. The group sang Monday through Thursday inside the rotunda over the lunch hour. When another group had a permit for, or even requested to use the rotunda, the sing-along relocated outside.

As time passed, the sing-along got smaller.

The initial crackdown by Gov. Scott Walker's administration began in September 2012 under the supervision of newly appointed Capitol Police Chief David Erwin. Arrests were made under a revamped administrative code section requiring that "protest groups" of four or more apply for a permit. After the bulk of these citations were dismissed in state court, the Capitol Police ceased the arrests.

During this time, one of the Solidarity Singers filed suit in federal court. On July 8, Federal Judge William Conley granted a preliminary injunction prohibiting the Department of Administration from enforcing the permit requirement for groups under 20 members. Conley's ruling expressed serious reservations about the ultimate constitutionality of the permit requirement, and the case is set to be litigated this winter.

Based upon DOA's interpretation of Conley's ruling, the crackdown against people participating in the sing-along resumed on July 24. Since then, hundreds of participants -- ages 14 to 84 -- have been handcuffed, removed, and cited by the Capitol Police for singing. Even spectators, including state Rep. Sony Pope, doing nothing more egregious than quietly watching, have been threatened with arrest.

So why don't the singers just get a permit? DOA is touting the permits as both free and easy to acquire. While there are many constitutional concerns raised with the permit process, I believe the heart of the problem lies in the little-publicized liability agreement. When applying for a permit, you agree two things: You will hold the grantors harmless for any injuries you suffer, even at their hands, and, more importantly, you agree to be financially liable for any costs incurred as a result of your event. You are not only liable for your own group, but also for any damage or costs associated with any other people or groups who decide to show up.

Think about that. The DOA is the entity that originally estimated the "damage" to the Capitol from the 2011 protests at \$7 million. When the final cost was tallied, it amounted to about \$100,000. Under the administrative code rules, this same agency would have absolute discretion when determining the costs. It is quite plausible that a person taking out a permit could be liable for thousands of dollars without any recourse. Conley expressed understandable concern about this provision in his preliminary ruling. From a constitutional perspective, this is the very definition of a "chilling effect" on speech. This whole scenario becomes even more troubling considering that Walker contemplated placing agitators among the peaceful citizens during the 2011 protests.

Assume, however, for the sake of argument, that the permitting requirement passes constitutional muster. We must still ask the crucial question of whether these arrests are a reasonable and responsible use of law enforcement resources.

If the sing-along presents a safety concern as DOA has sporadically claimed, why was it allowed to continue for almost two years unmolested? Frankly, the manner in which the crackdown has been conducted utterly discredits the safety claim. Each day at noon, a recorded announcement declares an unlawful assembly, and the arrests begin in a seemingly random fashion. Only a few participants are arrested on any given day, and at exactly 1 p.m., the Capitol Police disappear. This is perhaps the most surreal part of this troubling scenario. Apparently, conduct worthy of arrest at 12:59 becomes invisible to the DOA at 1:01.

If the goal is to end the sing-along, the strategy has been an unmitigated disaster. The DOA and leadership of the Capitol Police have taken an event that was rapidly waning and swelled it to numbers not seen since 2011. They have created a volatile situation that endangers officers, protesters, and spectators alike. The crackdown violates all best practices in law enforcement for handling peaceful protests, creating repeated flash points and destroying all rapport between officers and protesters.

I know many Capitol Police officers are unhappy with the current strategy. These officers were instrumental in maintaining a peaceful and safe environment during the Act 10 protests, and fulfilled their duties admirably. They are now in an impossible situation. Why? They were one of the few groups of police officers not exempt from Act 10. They have lost their union and their voice in their working conditions.

The pivotal moment for me came Aug. 15, when police arrested journalist Matt Rothschild, a Madison alderperson, and a 14-year-old girl who was singing with her mother. The arrest of a journalist covering a news story is a grave indication of the health of democracy in Wisconsin. On that day, I reached my fill of watching the frail wrists of 80-year-old women and children placed into handcuffs. I could not watch another teacher, student, lawyer, nurse, or any other Wisconsinite arrested for the sound of his or her voice. I decided to do

the only thing I could think of, and that was to sing. So far, I and the other participating off-duty police officers have not been arrested.

I will end with this thought: No other administration, Democratic or Republican, has assaulted free speech rights of Wisconsinites in this manner. Gov. Tommy Thompson would have spoken with the singers in the rotunda, and may have even joined in a verse of "If you want to be a Badger." The crackdown on peaceful protesters is just not a Wisconsin value. The time has come for us to decide what we want this state to look like. If we make the wrong decision and allow the current course to continue, history will not judge us kindly.

On, Wisconsin.

Brian Austin is a Dane County resident and police officer. He previously served as an assistant district attorney in Milwaukee and Menasha counties after receiving his law degree from the University of Wisconsin.