

CHANNELING FOREST GUMP

By: Jack Greiner on April 19, 2017 on graydon.law

I can't help but think of this [famous quote from Forrest Gump](#) as I read a Washington Post article about [efforts by lawmakers in a number of states](#) to introduce legislation criminalizing protestors for . . . protesting. If that strikes you like a First Amendment problem, you are probably correct. If it strikes you as totally unnecessary legislation, you are also right. And if the fact that it arises from unsubstantiated allegations about "paid protestors" bothers you, then you are not alone.

The Washington Post article cites a number of examples - a [proposed Tennessee law](#) would immunize drivers who unintentionally hit a protestor with a car. A [proposed Minnesota law](#) would provide enhanced criminal penalties for blocking certain highways. A [proposed Arizona bill](#) would make "rioting" subject to state racketeering laws. And the law would cover the "riot" even it springs from a peaceful protest and even if the violence is the work of people opposed to the protestors.

What's more, the Arizona bill would allow for the arrest of people for organizing the event. John Kavanagh, the sponsor of the Arizona bill, made his intentions clear when he asked his colleagues during debate on the bill: "Wouldn't you rather stop a riot before it starts?"

The answer to that question, it seems to me, is "sure" — if we had a crystal ball and knew for certain that a particular protest was going to turn violent. But of course, we don't know that. And that means that people may be discouraged from organizing a protest for fear of it turning violent (possibly from the actions of opponents) and being prosecuted. People who are familiar with the First Amendment (it's unclear whether Senator Kavanagh is a member of that club) call that a chilling effect. And the First Amendment won't tolerate laws that chill protected conduct.

And that would especially seem to be in order in these cases, since the justification for the laws apparently is a conspiracy theory that the protestors are "professionals." But that notion has [not been supported by any evidence and pretty much debunked](#).

So we have laws introduced based on a false narrative that would potentially punish, or at a minimum stifle, protected speech. Which seems bad enough, but it's coupled with the fact that there are plenty of laws that could address any of the "problems" identified. Most every state has laws about disturbing the peace, vandalism, and trespassing. All of these

would address “riots.” And if anyone purposely organized a violent demonstration, existing criminal conspiracy laws would address that conduct. So the “riot” laws are at a minimum superfluous.

Most every state recognizes “contributory negligence” - so a protestor blocking traffic accidentally struck by a driver would likely not recover in a civil action. That renders the proposed Tennessee law unnecessary.

The proposed laws are bad ideas. The fact that they are motivated by false information makes them even worse. Let’s hope they never see the light of day.