

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 21CR00599-RBW
)	
)	
DONNIE DUANE WREN,)	
)	
)	
Defendant,)	

**MOTION TO DISMISS COUNTS 7, 8, 9 AND 13 AND 14 OF THE
INDICTMENT (MULTIPLICITY)**

The Defendant, **DONNIE DUANE WREN**, through undersigned counsel and pursuant to Rule 12(b)(3)(B)(ii), Federal Rules of Criminal Procedure and the Double Jeopardy Clause of the United States Constitution, respectfully requests this Honorable Court to dismiss the aforementioned counts of the Indictment as multiplicitous. As grounds for this motion the Defendant would state:

1. The Defendant is charged by Indictment with:

Count 7 – Title 18 U.S.C. §**1752 (a)(1)** (Knowingly enters or remains in any restricted building or grounds without lawful authority to do so;)

Count 8 – Title 18 U.S.C. §**1752 (a)(2)** (Knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;)

Count 9 – Title 40 U.S.C. §1752(a)(4) (Knowingly engages in any act of physical violence against any person or property in any restricted building or grounds)

Count 13 – Title 40 U.S.C. §5104(e)(2)(D) (Utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress;)

Count 14 - Title 40 U.S.C. §5104(e)(2)(F) (Engage in an act of physical violence in the Grounds or any of the Capitol Buildings; or)

2. Convictions for all these counts would violate the Double Jeopardy Clause of the U.S. Constitution. Moreover, the unnecessary multiplication of counts will prejudice a jury against Mr. Wren. Multiplicity arises when “an indictment charges the same offense in more than one count.” *United States v. Mahdi*, 598 F.3d 883, 887 (D.C. Cir. 2010), quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999). The Double Jeopardy Clause of the Constitution protects against “multiple punishments for the same offense.” *Weathers*, 186 F.3d at 951, cert. denied, 529 U.S. 1005 (2000); U.S. Const. amend. V, cl. 2. Also, courts have recognized that charging the same offense in multiple counts can “unfairly increas[e] a defendant’s exposure to criminal sanctions” because a jury may conclude that given the number of charges, the defendant must be guilty of something. *United States v. Clarke*, 24 F.3d 257, 261 (D.C. Cir. 1994), quoting *United States v. Harris*, 959 F.2d 246, 250 (D.C. Cir. 1992), *abrogated on other grounds*, *United States v.*

Stewart, 246 F.3d 728 (D.C. Cir. 2001); see also *United States v. Morrow*, 102 F. Supp. 3d 232, 246 (D.D.C. 2015) (multiplicitous charges may suggest to a jury “that a defendant has committed not one but several crimes”), quoting *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981); *United States v. Phillips*, 962 F. Supp. 200, 202 (D.D.C. 1997).

3. These five counts of the Indictment expose the defendant to double, and even triple jeopardy for the same alleged acts. The Double Jeopardy Clause protects criminal defendants against both successive punishments and prosecutions for the same criminal offense. *United States v. Dixon*, 509 U.S. 688, 696 (1993) (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)); see also *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008); *United States v. Mancuso*, 718 F.3d 780, 791 (9th Cir. 2013). When two different criminal statutes are violated, “the double jeopardy prohibition is implicated when both statutes prohibit the same offense or when one offense is a lesser included offense of the other.” *Rutledge v. United States*, 517 U.S. 292, 297 (1996).

4. Moreover, many of the charges are lesser-included-offenses of the other charges. Engaging in physical violence in a restricted area is a lesser-included-offense of 1) engaging in physical violence at the Capitol and 2) physically assaulting an officer at the Capitol. If Wren is found guilty of Count Four (assaulting an officer performing official duties at the Capitol), he is therefore also guilty of both

engaging in violence at the Capitol and engaging in violence in a restricted area. (Counts Nine and Fourteen). Furthermore, “Disorderly conduct” in a restricted area (Count Eight) is a lesser-included offense of “Disorderly conduct” in the Capitol (Count Thirteen).

WHEREFORE, based upon the foregoing, counsel respectfully requests that the Court dismiss the repetitive and multiplicitous counts of the Indictment.

Respectfully submitted,

GEORGE T. PALLAS, P.A.
Counsel for Donnie Wren
2420 SW 22nd Street
Miami, FL 33145
305-856-8580
305-860-4828 FAX
gpallas@beckhamsolis.com

By: /s/ George T. Pallas
GEORGE T. PALLAS, ESQ.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of February 2023, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing.

By: /s/ George T. Pallas
GEORGE T. PALLAS, ESQ.