

November 19, 2019

Dear Governor Evers,

You recently announced the creation of the Governor's Climate Task Force and many of us are eager to work with you to make Wisconsin carbon-free by 2050. As a first step, the undersigned thirty organizations are asking you to veto the Felony Trespass Bill (AB426/SB386). The bill purports to protect worker safety and the private property rights of utilities and energy companies while simultaneously ensuring First Amendment freedoms. On the surface, these are goals that should and often do garner bipartisan support. However, Wisconsin lawmakers have failed to consider the broader implications of this bill. Instead of accomplishing those goals, the Felony Trespass Bill is an unwarranted giveaway to energy companies that effectively stifles valid opposition through threats of felony convictions.

Under Wisconsin law, it is already a felony—punishable by up to six years in prison and a \$10,000 fine—to intentionally damage or trespass upon property owned, leased, or operated by utilities delivering important services such as heat, power, and light.¹ However, the bill expands the law to include the property of other utilities such as water, but also to property owned, leased, or operated by energy companies engaged in the distribution of oil and petroleum.² As a result, the bill creates a felony where one did not previously exist.

This expansion of the law is problematic for several reasons. First, there is a fundamental difference between an oil pipeline merely passing through the state and utilities that provide important services such as heat, power, or light directly to homes and businesses. Second, and more importantly, oil pipelines do not just operate on company-owned land, but also on other private and public lands. This leads to questions about how the law could be enforced against private landowners, tribal members, and people using public lands—questions that need to be answered before this bill becomes law.

How will law enforcement officers and prosecutors interpret the intent element of the law and attempt to enforce it? What happens to the landowner who asks a pipeline operator questions about activities taking place on the landowner's property that was condemned against their will for a pipeline easement?³ What happens to tribal members who speak out against the continued operation of an aging pipeline on tribal land even though the company's easements for that pipeline have been expired for years?⁴ What happens to the person recreating on public land in the vicinity of a pipeline who failed to obtain the required permission from an energy company?⁵

It is already illegal to threaten or harm anyone, trespass, and to destroy the personal property of others. But that is plainly not what this bill is about because those activities are already illegal.⁶ Take, for example, a 2017 incident in Douglas County where six people were arrested for temporarily halting construction on Enbridge's

¹ See Wis. Stat. §§ 943.01(2k), .143; Wis. Stat. § 939.50(3)(h).

² 2019 Wis. Assemb. Bill 426, § 3 (expanding the definition of "energy provider" to include "[a] company that operates a gas, oil, petroleum, refined petroleum product, renewable fuel, water, or chemical generation, storage transportation, or delivery system.").

³ See Superior Man Arrested for Trespassing on His Own Land, Duluth News Tribune (Dec. 4, 2009), <https://www.duluthnewstribune.com/news/2291397-superior-man-arrested-trespassing-his-own-land>

⁴ See Alex Schwartz, The Battle for Bad River, Gizmodo (Sept. 11, 2019), <https://earth.gizmodo.com/the-battle-for-bad-river-1837982919>.

⁵ See Wis. Stat. § 943.143(2) ("Whoever intentionally enters an energy provider property without lawful authority and without the consent of the energy provider that owns, leases, or operates the property.") (emphasis added).

⁶ See, e.g., Wis. Stat. § 940.19 (criminalizing battery); Wis. Stat. § 939.32 (criminalizing attempted battery); Wis. Stat. § 947.013 (criminalizing threats of harm); Wis. Stat. § 943.01(1), (2)(b) (criminalizing damaging the physical property of another and damaging property belong to a public utility or common carrier); Wis. Stat. § 943.15 (criminalizing trespassing onto a construction site); Wis. Stat. § 943.13(1m) (imposing a \$1,000 fine for trespassing).

Line 3, an oil pipeline that runs through Minnesota to Superior, Wisconsin.⁷ At least two of those people were convicted and sentenced to jail time for trespassing, disorderly conduct, and obstructing an officer.⁸

This bill is unnecessary and the potential harms significantly outweigh the perceived benefits. Simply being charged with a felony can have drastic adverse impacts on people of color, who suffer disparate outcomes at the hands of the criminal justice system.⁹ Convictions will result in lengthy prison sentences, hefty fines, and a loss of the right to vote.¹⁰ There would also be a chilling effect on those citizens who just want to exercise their First Amendment freedoms. Rather than risk a felony charge, which even if baseless is costly to defend, people are much more likely to keep their mouths shut or resort to other less effective means. Proponents of this bill unconvincingly point to language that attempts to create an exception that already exists under the First Amendment.¹¹ In any event, such an exception offers little protection when the line between free speech and a felony is razor thin.

We urge you to consider these broader implications of this ill-advised bill. AB426 does nothing to protect worker safety or private property rights and instead weaponizes the law on behalf of energy companies by providing them with a tool to silence opponents, whether citizen activists, tribal members, or concerned landowners. After such consideration, we are confident that you will do what is right and veto this bill.

Sincerely,

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⁷ Six Charged in Protest at Pipeline Worksite in Douglas County, Duluth News Tribune (Aug. 30, 2017), <https://www.duluthnewtribune.com/news/1707765-Six-charged-in-protest-at-pipeline-worksite-in-Douglas-County>.

⁸ 2 Found Guilty in Wisconsin Pipeline Protest Case, StarTribune (Aug. 14, 2018), <http://www.startribune.com/2-found-guilty-in-wisconsin-pipeline-protest-case/490830371/>.

⁹ See, e.g., Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System, The Sentencing Project (Apr. 19, 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>; Makenzie Laron Aaby, An Assessment of Sentencing Disparities among American Indians within the Eighth, Ninth, and Tenth Federal Circuit Courts (July 17, 2018) (M.S. thesis, Portland State University), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=5530&context=open_access_etds.

¹⁰ Wis. Stat. § 939.50(3)(h); Wis. Stat. § 6.03 (disqualifying voters convicted of felonies).

¹¹ 2019 Wis. Assemb. Bill 426, § 9 (excepting persons exercising their right of free speech or assembly that is otherwise lawful); see, e.g., Ward v. Rock Against Racism, 491 U.S. 781 (1989) (upholding the right to free speech in public forums unless narrowly tailored, content-neutral time, place, and manner restrictions have been enacted).

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