

**October 22, 2019**

Dear Wisconsin State Senators,

The undersigned 29 organizations are asking you and your colleagues in the Senate to oppose 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.<sup>1</sup> That makes sense, as the disruption of such services can put lives at risk, particularly during extremely hot or cold weather. The bill currently before the State Senate 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.<sup>2</sup> 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?<sup>3</sup> 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?<sup>4</sup> What happens to the person recreating on public land who failed to obtain the required permission from an energy company and has no idea they are in the vicinity of a pipeline because it is poorly marked?<sup>5</sup>

Everyone can agree that it should be 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.<sup>6</sup> Take, for example, a 2017 incident in Douglas County where six people were arrested for temporarily halting construction on Enbridge's Line 3, an oil pipeline that runs through Minnesota to Superior, Wisconsin.<sup>7</sup> At least two of those people were convicted and sentenced to jail time for trespassing, disorderly conduct, and obstructing an officer.<sup>8</sup>

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

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

<sup>2</sup> 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.").

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

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

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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>.

<sup>8</sup> 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/>.

justice system.<sup>9</sup> Convictions will result in lengthy prison sentences, hefty fines, and a loss of the right to vote.<sup>10</sup> 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.<sup>11</sup> In any event, such an exception offers little protection when the line between free speech and a felony is razor thin.

We urge lawmakers 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 lawmakers will do what is right and vote against this bill.

Sincerely,

Paul DeMain  
Board of Directors Chair  
**Honor The Earth**

Guy Reiter  
Executive Director  
**Menikanaehkem Inc**

Mark Borchardt  
Founder  
**80 Feet Is Enough!**

Patricia Hammel  
**National Lawyers' Guild  
Madison Chapter**

Rob Lee  
Staff Attorney  
**Midwest Environmental Advocates**

Elizabeth Ward  
Program Coordinator  
**Sierra Club Wisconsin**

Gail Nordheim  
Co-Coordinator  
**350 Madison**

Al Gedicks  
Wisconsin Resources  
**Protection Council**

Phyllis Hasbrouck  
Organizer  
**Wisconsin Safe Energy Alliance**

Molly Collins  
Advocacy Director  
**ACLU of Wisconsin**

Leah Qusba  
Executive Director  
**Alliance for Climate Education**

Max Prestigiacomio  
Executive Director  
**Youth Climate Action Team**

Devin Matznick  
External Comms Coordinator  
**Wisconsin Youth Network**

John E. Peck  
Executive Director  
**Family Farm Defenders**

August Ball  
Founder/CEO  
**Cream City Conservation**

Shannon Sloan-Spice  
Co-founder  
**Water Protectors of Milwaukee**

Paul DeMain & Waldo Asp  
Co-Chairs  
**Sawyer County / Lac Courte Oreilles  
Democratic Party**

David Leeper  
**Former District Attorney and  
Police Officer**

Molly McGuire  
President  
**350 Stevens Point**

John Helt  
President, Board of Directors  
**WI Interfaith Power and Light**

Maria Drews  
**Madison Parents Concerned about  
Climate Change**

Julie Enslow  
Facilitator  
**350 Milwaukee**

Mary Jo Wentz  
**Columbia County WiSE Alliance**

Tom Seery  
Co-Chair  
**Peace Action of Wisconsin**

David Rhoads  
Director  
**Greening Greater Racine**

Eric Hansen  
Founding Member  
**Citizens Acting for Rail Safety -  
Milwaukee Area**

Justin Novotney  
Local Coordinator  
**Extinction Rebellion Madison**

Melissa Smith  
Executive Director  
**Great Lakes Wildlife Alliance**

Barbara Richards  
Facilitator  
**Friends of Milwaukee's  
Downtown Forest**

Dace Zeps  
Administrator  
**Wisconsin Network for Peace,  
Justice & Sustainability**

<sup>9</sup> 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](https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=5530&context=open_access_etds).

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

<sup>11</sup> 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).