

To: Members of the Senate Judiciary Committee and Committee Chair Senator John Eklund

Subject: S.B. No. 33, Hoagland, "Modify criminal and civil law for critical infrastructure damage"

Date: 10/23/2019

At a time when the democratic process, freedom of speech, and freedom of assembly are under attack, while corporations continue to accrue power and influence in state houses and Washington, the President of the United States himself calling the press the "ENEMY OF THE PEOPLE", and "think tanks" funded by the Kochs and Mercers construct bills aimed at further privatizing profit and socializing environmental and economic costs it is stunning to me that Senator Hoagland continues to advocate for this horrendous bill that he and his staff are simply acting as a conduit for even though his last push in the lame duck last Fall failed miserably. This bill is straight from the playbook of the American Legislative Exchange Council (ALEC) who's primary benefactor just so happens to be the aforementioned Koch Brothers. As Okbazghi Yohannes wrote in his book "The Biofuels Deception: Going Hungry on the Green Carbon Diet":

*"Operating in over sixty countries with about 100,000 workers, Koch Industries controls four oil refineries, six ethanol plants, a natural gas-fired power plant, **and 4,000 miles of pipeline within the United States...**The Koch Industries are major polluters, ranking Third among the thirty worst polluters...after Exxon and [AEP]...In 2012, Koch Industries was singled out to be the number-one producer of toxic waste in the United States, producing 950 million pounds of toxic chemical waste."*

Frankly it is cowardice of Senator Hoagland to let himself be used by ALEC and/or the Kochs for their own profiteering while simultaneously putting a chill on freedom of speech and assembly. To be honest bills like SB 33 tell Ohioans that our Republican lead Senate, with the tacit approval of people like my Democratic Senator Sandra Williams, has farmed out the authorship and intellectual foundations of Ohio's bills to a think tank that only has the interests of large multinationals, and more specifically the Hydrocarbon Industrial Complex in mind. Furthermore, I find it insulting that whenever Senator Hoagland is questioned as to the connections between his bill and ALEC he denies any such link even though I was told by one of his staffers by phone that indeed they had modified the ALEC template.

It is no coincidence that this legislation comes in the aftermath of the Dakota Access Pipeline protests and as Ohio, West Virginia, and Pennsylvania advocate for the Appalachian Storage Hub (ASH) that has further exposed that fact that the "Shale Revolution" that came into Ohio under the guise of "energy independence" was nothing more than a tried and true way of appealing to Appalachian patriotism. You don't need to take my word for it because this sentiment was confirmed for me in a phone conversation I had with Senator Hoagland's primary advisor on this bill Aaron Dauterman who invoked the ASH without my prompting twice during our roughly 15 minute conversation last Fall when the bill went by the name of SB 250. As this ASH and associated upstream developments bare down on Appalachian Ohio elected officials like Senator Hoagland, and this committee, should be working on bills that expand both the scale and scope of tools available to the citizenry if they feel the need to voice their concerns about what this storage hub will mean for their communities and their environment. Not only is this bill coming at the exact wrong time for Appalachian Ohioans but it is also not necessary and redundant,

which begs the question why now? The vagueness of this bill is intentional and leaves plenty of room for authorities and corporations to prevent, by way of implied and real penalties, all but the most ardent of supporters and/or objectors to any given existing or proposed piece of “critical infrastructure” from speaking out. This type of legislation will further cleave this state along demographic and rural vs. urban lines and will put the very constituents Senator Hoagland and this committee were sent to Columbus to protect in harms way.

The real goal of the unconventional oil and gas industry is beginning to be revealed and it speaks to a coordinated effort to extract resources from Appalachia, transport those valuable resources to the costs, and getting the gas and NGLs out on the global market where profits can be maximized. It is no coincidence then that “56 bills that would restrict people’s right to peaceful assembly have been introduced in 30 states since the 2016 election [and Dakota Access Pipeline Standoff].”

The oil and gas sector is pursuing the long-view in its effort to secure the production, transport, and export network to establish growth in, and profit from, oil and gas demand in Asia, the Middle East, and even Europe where countries historically tied to Russia are looking to diversify away from this reliance. Part of this long-view involves constructing and advocating for legislation and/or decreased regulations via think-tanks and lobby groups such as the The Consumer Energy Alliance, HBW Resources, Council on Foreign Relations, American Petroleum Institute (API), IHS Markit, The American Fuel & Petrochemical Manufacturers (AFPM), and most notably the American Legislative Exchange Council (ALEC) by way of its primary financial backer - Koch Industries (Fang, 2014, Shelor, 2017). In outlining the benefits of natural gas expansion to The Economist in March of 2018 IHS Markit’s vice-chairman Daniel Yergin noted that natural gas export is “an example of how trade in energy might actually soothe global tensions. He says that China now sees America as part of the solution to its energy needs, rather than a competitor for scarce resources. Mr Trump has also discussed LNG exports with leaders from India and South Korea, Mr Yergin notes. “He has become the world’s number one LNG salesman”.

All of this interest in legislation advancement and decreased regulation has been framed in national energy independence and national security language, and the threat of “losing efficient and affordable access to critical services needed to power our daily lives” as Oklahoma Oil & Gas Association (OKOGA) wrote in a letter to Oklahoma Governor Mary Fallin in May of 2017 (Karges, 2017). ALEC is the source of what they are calling the Critical Infrastructure Protection Act (ALEC.org), which would make it a felony to impede or inhibit critical infrastructure operation and/or construction. Close approximations, if not exact replicas, of this template have been passed in several oil and gas rich and/or pathway states, and are currently being debated in states like Ohio with Senate Bill 33 (Ohio Legislature, 2019), and Senate Bill 189 (South Dakota Legislature, 2019), also known as the “Riot Boosting Act,” in South Dakota. This proposed bill in South Dakota was recently blocked by U.S. District Judge Lawrence L. Piersol who wrote:

Imagine that if these riot boosting statutes were applied to the protests that took place in Birmingham, Alabama, what might be the result? ... Dr. King and the Southern Christian Leadership Conference could have been liable under an identical riot boosting law[.] (Lass, 2019)

Much of the industry's effort stemmed from their disappointment with how the Dakota Access Pipeline (DAPL) conflict played out and how the industry was perceived. The industry is now coordinating state-level legislation efforts in an anticipatory fashion. Industry leaders are looking out several years to evaluate their options when it comes to projects that affected citizens could oppose: everything from gas transmission pipelines that could gain national attention to more local projects like the numerous oil and gas injection wells the industry requires in order to dispose of their growing waste streams. Concerned citizens are framing their opposition to such legislation as an effort to stave off the worst of climate change, while proponents of the natural gas industry, including some prosecutors, are framing their efforts as terroristic acts analogous to the 9/11 hijackers and Ted Kaczynski, which is why sentencing under these acts comes with a felony conviction and more than 10 years in prison. According to the FBI's deputy assistant director and top official in charge of domestic terrorism, John Lewis, "In recent years, the Animal Liberation Front and the Earth Liberation Front have become the most active criminal extremist elements in the United States...the FBI's investigation of animal rights extremists and ecoterrorism matters is our highest domestic terrorism investigative priority" (Mudde & Hirsch-Hoefler, 2014). As The American Fuel & Petrochemical Manufacturers (AFPM) put it in a December 7, 2017 letter declaring their support for ALEC's legislative efforts:

Energy infrastructure is often targeted by environmental activists to raise awareness of climate change and other perceived environmental challenges. These activities, however, expose individuals, communities, and the environment to unacceptable levels of risk and can cause millions of dollars in damage...As the private sector continues to expand and maintain the infrastructure necessary to safely and reliably deliver energy and other services to hundreds of millions of Americans, policymakers should continue to consider how they can help discourage acts of sabotage...Finally, it will also hold organizations both criminally and vicariously liable for conspiring with individuals who willfully trespass or damage critical infrastructure sites. (SCRIBD.com)

Those organizations deemed "criminally and vicariously liable" could face, in some states, \$100,000 to \$1 million, which of course could put them out of operation. The AFPM's senior vice president for federal and regulatory affairs, Derrick Morgan, referred to these vicarious organizations as "inspiring...organizations who have ill intent, want to encourage folks to damage property and endanger lives..." (Fang, 2019). The intent is to criminalize protest, peaceful and otherwise, in other words, to limit local citizens' self-determination.

In Ohio, other pieces of legislation that are being pushed in concert with ALEC include the recently submitted HB 362 that would "Create the crime of masked intimidation" and is sponsored by State Representatives Phil Plummer and George F. Lang. HB 362 would add to the state's "Offenses Against the Public Peace" Chapter 2917, activities of wearing a "mask or disguise in order to purposely do any of the following: (A) Obstruct the execution of the law; (B) Intimidate, hinder, or interrupt a person in the performance of the person's legal duty; or (C) Prevent a person from exercising the rights granted to them by the constitution or the laws of this state. Whoever violates this section is guilty of masked intimidation, which is a misdemeanor of the first degree."

Representative Lang also introduced Ohio House Bill 625. HB625 is described by one Ohioan reporter, Sam Allard, as follows:

Ohio continues its tradition of marching boldly, with sigils [magical symbols] flying, in the opposite direction...In defiance not only of environmental sustainability but of home rule, (the constitutional idea that municipalities should be allowed to govern themselves), the state's House of Representatives saw fit to pass HB625 yesterday, a vindictive piece of legislation that prohibits municipalities from regulating or taxing auxiliary containers like plastic bags. (Allard, 2018)

The ultimate goals of Ohio House Bills HB 625 and HB 362 go beyond their seemingly centrist language. In effect, they would suppress peaceful protest and local decision-making, two principles of liberalism embedded in the U.S.' political system.

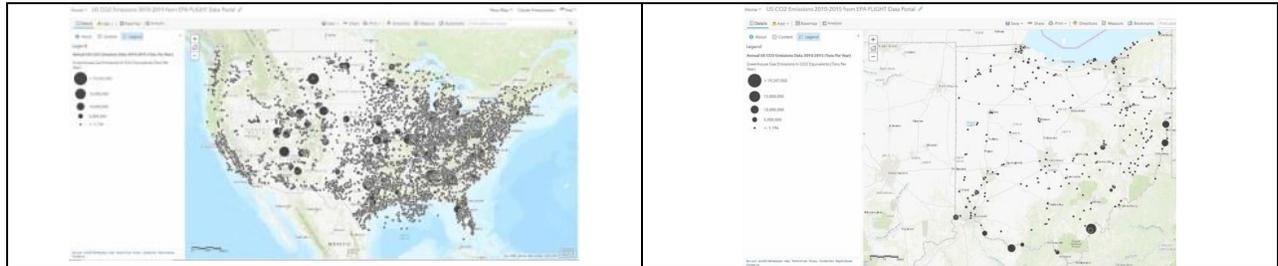
ALEC- sponsored "critical infrastructure" bills are not limited to Central Appalachia, but have also been enacted in North and South Dakota, Oklahoma, Iowa, Louisiana, Indiana, Tennessee, Texas, and Missouri. The Oklahoma version of the critical infrastructure bill actually served as the model for ALEC's efforts in late 2017 and 2018 according to the AFPM's letter of support for ALEC in December of 2017. "Critical Infrastructure" legislation is also being debated in fracking-heavy Pennsylvania and in Wisconsin. Wisconsin is the epicenter of sand mining operations where the sand is used in fracking operations around the country.

Similar legislation suppressing principles of liberalism is widespread throughout the U.S. According to the International Center for Not-for-Profit Law, 36 states have considered 104 iterations of critical infrastructure legislation, with 18 having been passed, 17 pending, and 69 have been defeated or expired. The first incarnation was Louisiana Act 157 in 2004 signed into law by then governor Kathleen Blanco and it could be argued that the true precursors of this type of legislation were the Pipeline Safety Act and the Patriot Act signed the month after 9/11 in 2001. These two pieces of legislation dramatically expanded how the U.S. defines domestic terrorism, which raises serious questions about prosecution and due process for civil libertarians. However, the conclusion of the Dakota Access Pipeline protests by the Standing Rock Indian Reservation in February 2017 resulted in more than 15 pieces of introduced legislation that were modeled after The American Fuel & Petrochemical Manufacturers and ALEC's template.

As mentioned earlier, on its face, the language ALEC advocated, the "Critical Infrastructure Protection Act" and all its derivatives, is ostensibly centrist. However, in reality the language is extremely broad and suppresses peaceful dissent and local governance. Further, the "Critical Infrastructure Protection Act" includes more than 70 types of infrastructure from wastewater treatment and well pads to ports and pipelines. However, along with the Foreign Trade Zones (FTZs) enacted by the Department of Commerce, security is of such importance because more than 50% of this infrastructure is oil and gas related.

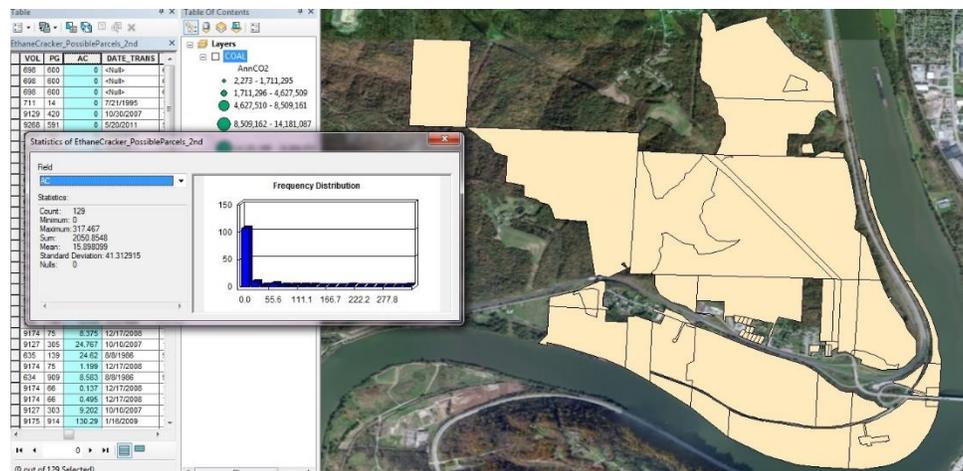
It is quite refreshing that this bill doesn't really hide that it is targeting opposition to fossil fuel related infrastructure given that this extremely broad definition itemizes > 70 pieces of infrastructure from wastewater treatment and well pads to ports and pipelines, which means that 50% of the infrastructure outlined is contained within the oil, gas, or derivatives ecosystem holistically defined. There are >8,000 pieces of such infrastructure across the countries and at least 308 in Ohio alone (Figure 1).

Figure 1. [Critical Infrastructure map of the United States and Ohio weighted by CO<sub>2</sub> emissions.](#)



However, as I already mentioned the Appalachian Storage Hub is fueling new proposals by the month, whether it is [Marathon's proposed underground NGL storage facility in Hopedale](#) or [its completion of its Rio Pipeline expansion aimed at moving Utica NGLs from Lima, Ohio, to Robinson, Illinois](#). The primary foci of this bill seem to be the types of mega infrastructure being proposed right in Senator Hoagland's backyard with the largest example being the PTT Cracker that seems a *fait accompli* at this point even though countless residents have voiced their opposition or at the very least deep skepticism as to the benefits of such a project (Figure 2).

Figure 2. A rough sketch of the parcels identified as suitable for the Dilles Bottom/Shadyside cracker proposed by PTT.



Both the opposition and deep skepticism are based in the fact that many have taken a trip north to Beaver County, Pennsylvania and seen what such a site would look like as Shell continues to construct its cracker plant on the banks of the Ohio River adjacent to I-376. This opposition and deep skepticism would likely fall under the guidance of Senator Hoagland and ALEC's SB 33 and would disappear for fear

of being charged with a felony. How is it possible that voicing concern as to the operation of existing infrastructure or proposed projects like the following could in any way be construed as impeding or inhibiting operations when it is the mandate of the citizenry to speak out when they feel the hard questions aren't being asked or the interests of business are coming at the expense of them and their children:

1) the Energy Transfer Partners pipeline that exploded in Center Township, PA last September nearly incinerating an entire neighborhood (See image below taken just last week 4/2/2019)



2) well pads like XTO's that exploded last year in Powhatan Point also within or close to Senator Hoagland's district (See link below to YouTube footage from Ohio State Trooper's helicopter)

<https://www.youtube.com/watch?v=D0F450ESH8&t=26s>

3) Tallgrass's pipeline explosion in Noble County in January of 2018 or the more recent explosion in the same county of a pipeline operated by Texas Eastern Transmission (See below photo taken by neighbor immediately after this explosion happened)



4) the Leach Express pipeline explosion across the river in West Virginia

5) Explosions like [this propane tanker on State Route 332 coming from the Scio processing plant just over 10 miles away in Carrollton](#) (Note: The Scio processing plant and “Critical Infrastructure” like it are hotspots for these kinds of incidents and unfortunately if this bill passes objections to future such infrastructure proposals will be suppressed or possibly criminalized)



When Senators like Hoagland, Coley, Huffman, Maharath, Peterson, Rulli, Terhar, and Wilson proposed bills like SB 33 it forces us to question where their allegiances lie? Are they truly concerned as to the welfare of their constituents and The Buckeye State writ large or are they furthering a long march towards complete corporate capture of statehouses, law enforcement, the prison system, and the very democracy they claim to pledge an allegiance to? This bill would put Hoagland and its co-sponsors on the side of corporate America and the globalists we so often here condemned in conservative circles and

would further cement the powers granted by way of Citizens United, Buckley v. Valeo, and McCutcheon v. FEC. Those are rulings, and SB 33 is a bill, that would put the welfare of Appalachia in the crosshairs of major multinational fossil fuel interested that will not let anything stand in their way during good times but in times like those that would follow the passing of SB 33 they would not even have to crush the opposition to their machinations because there wouldn't be any NOT because there actually isn't any opposition but because everyone will be too afraid to say their peace for fear of retribution and/or prison.

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter E. Auch', written in a cursive style.

Walter E. "Ted" Auch PhD

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