

## H Cantino opponent testimony SB 33, 10-21-19 **including opposition to possibly amended bill**

Dear Chair Callender and House Utility Committee members:

I urge you to reject SB 33. It is vague, arbitrary, inconsistent with the Ohio Revised Code, unnecessary, and clearly unconstitutional, *with or without the amendment to be possibly introduced this week (see final paragraphs on p. 2, below)*. It violates due process by arbitrarily - with no definition of what constitutes "critical" - singling out certain infrastructure that it merely labels "critical," with *no justification for selection of these and not other infrastructure categories*, and then deems undefined activities as "improper" (!) "tampering," making them potential felony offenses. The bill thus violates due process. As Mr. Thomas Cartwright eloquently elucidated in testimony delivered to the Senate Judiciary Committee last fall, the bill makes non-destructive action at some sites punishable with higher penalties (third degree felonies) than destructive behavior elsewhere (misdemeanors under Ohio law). It thus targets people deemed to support actions at these arbitrarily labeled sites for unfair extra punishment, a violation of due process, and is clearly intended to chill dissent, a fundamental violation of First Amendment rights. Similar bills, also generated, as this one was by the American Legislative Exchange Council (ALEC), of which Sponsor Frank Hoagland is a member, are already chilling dissent and have been used to charge protestors on private property *who had permission to be there* with felonies and threats of high fines and long jail terms ([Inside Climate News: More States Crack Down on Pipeline Protesters, Including Supporters Who Aren't Even on the Scene](#) 3-28-19). It is also noteworthy that sponsor Hoagland will benefit financially and directly from passage of this legislation, as he owns a private security firm.

The possibility that people will be charged under this bill for the actions of others around them, including possible agent provocateurs who often infiltrate actions and may even be hired by the corporations who will benefit from any fines imposed by this legislation, means that there will be a First Amendment chilling effect, clearly ruled unconstitutional by the U.S. Supreme Court in multiple decisions since the 1950s. The possibility that corporations could then benefit financially from this legislation, when having inserted agent provocateurs who may cause criminal mischief, charges and fines are brought against innocent bystanders, certainly smacks of corporate-government collusion, corruption, and entrapment or, in other words, fascism.

Why aren't hospitals considered critical infrastructure? And schools? Why is it largely dirty fossil fuel corporate infrastructure that's deemed critical (although some other categories have been added to deflect from this initial focus)? Because they're obviously targets of first amendment protests due to their infliction of harm on people and communities and the *urgency*, well understood by millions of Americans, to avert climate disaster within the decade. The urgency and seriousness of climate catastrophe, outlined in last November's federal 4th National Climate Assessment (whose first sentence reads: "*Climate change creates new risks and exacerbates existing vulnerabilities in communities across the United States, presenting growing challenges to human health and safety, quality of life, and the rate of economic growth,*") is well understood by the educated public, including judges, such that the NECESSITY defense has now been deemed acceptable in courtrooms even when there has been clear intent to disrupt activity on these sites.

SB 33 would not just redundantly penalize already activity already covered by Ohio law but also single out for felonious charges vague and overbroad "tampering" activities at arbitrarily selected and undefined sites, leaving citizens who are concerned about the livability of our planet to

wonder whether their peaceful presence on a corporate site (which may have been imposed on the community against its will or even against the wishes of its elected officials) will result in felony convictions, jail, fines, and all the consequences in our society of a felony conviction. This intimidation of protest violates First Amendment rights, which you as elected officials have the duty to uphold.

Furthermore, the suppression of the public's voice by limiting oral opponent testimony to five speakers in some previous hearings, as was not done for proponent testimony, is an unconscionable suppression of First Amendment rights and clear abrogation of standard legislative process.

**Opposition to possibly amended bill:**

Rep. Jay Edwards, who represents Athens and serves on this committee, reported yesterday that an amendment to be possibly introduced this week would remove organizational liability for actions criminalized with felonies and draconian fines by this proposed legislation. This is an extremely corrupt and dangerous amendment, as it will *make it more likely that this dangerous legislation will be passed while leaving it as powerfully unconstitutional and suppressive of First Amendment rights*. Even without organizational liability, the bill would result in unconstitutional chilling and suppression of First Amendment rights by intimidating protesters with its vague language, including "intent to impede," and threats of felonies and high fines.

Finally and not less importantly, legislators' response to citizens that "it will be settled in the courts" is arrogant and irresponsible, shirking their/your duty to follow our Bill of Rights as elected representatives of the American people serving in public office. **Passage**, with its shirking of your duty to defend the Constitution and follow the rule of law, **will itself directly cause suppression of First Amendment rights** -- it will create fear, confusion and chilling of free speech as soon as you pass this legislation and *even beyond any possible court action*, as people who may be considering attending legitimate protected free speech actions remain confused and afraid, due to the vague language, overbreadth, and confusing threats of possible high fines and felonious charges that could result from attendance at First Amendment-protected actions.

I urge your judicious attention to justice, law, and the fundamental constitutional rights of Ohio citizens in your consideration of this dangerous, unnecessary, unconstitutional, and fascism-promoting bill.

If your interest is "safety," then stand up to the poorly regulated, toxic oil and gas industry's deadly assaults on the communities you represent, Jay Edwards. They're sickening and killing your constituents and poisoning our land. That's what your constituents are doing. You should be defending them.

Heather Cantino, Athens