

November 2, 2019



**Testimony of ACLU of Wisconsin
In Opposition to Senate Bill 386 & Assembly Bill 426**

The American Civil Liberties Union of Wisconsin is a non-partisan, non-profit organization working to protect civil liberties—including the freedom of speech and the right to demonstrate. The fight for freedom of speech has been a bedrock of the ACLU’s mission since the organization was founded in 1920, driven by the need to protect the constitutional rights of conscientious objectors and anti-war protesters.

We understand that there is a difference between exercising one’s First Amendment right to assemble and breaking the law. Legislators must recognize, however, that the Constitution firmly protects protests even when –and especially when –they stir anger, question preconceptions, challenge government policy, and induce dissatisfaction with the status quo.

The First Amendment safeguards protesters’ rights to awaken passions, to make the public aware of their positions and opinions. America’s robust tradition of free speech allows us all to effect change by making our voices heard. This is crucial to ensuring that the government remains responsive to the will of the people; it is what sets our country apart and is the reason it must be carefully and consistently protected.

We are therefore opposed to SB386/AB426 because they will create confusion and limit people’s ability to exercise their constitutional rights. These bills expand existing definitions of “energy provider” and “energy provider property” and create new instances where a person may be subject to felony prosecution for intentionally entering energy provider property without both lawful authority and permission from the energy provider; or damaging property with the intent to interrupt energy provider services. If convicted for either class H Felony, a person may be sentenced to up to six years in prison and a \$10,000 fine.

This expanded definition sends a message to protesters, who are often members of Native tribes and the organizations that support them, that the government is watching them and wants them to stop vigorously protesting the impending damage to their lands, homes, and livelihoods.

The bill also will create additional uncertainty regarding which “energy providers” are covered by the prohibition. The existing law has significant problems that would be greatly exacerbated by expanding the entities covered. What does it mean to intend to substantially interrupt or impair any service? If a person is part of a human chain blocking the access road for a delivery truck as an act of civil disobedience, could they become a felon?

The broadening of definitions in SB386/AB426 to the extent that people may now be subject to felony prosecution for previously acceptable activities that do not endanger the integrity or operation of energy infrastructure is deeply problematic, and we urge you to vote no on these bills.