

Vote NO on H.B. 481

Topline Takeaways:

Throughout U.S. history, protests have provided a critical means for Americans to amplify their individual voices by standing together.

The civil rights movement helped advance the cause of liberty and equal rights for all Americans. The annual March for Life regularly draws tens of thousands of Americans to Washington, D.C., to raise awareness about abortion laws. In 2009 and 2010, the Tea Party brought together people across the country to protest government-sponsored universal health care and government spending. After the Marjory Stoneman Douglas High School shooting on Valentine's Day 2018, more than 1 million people in the United States participated in The March for Our Lives to raise awareness of gun violence. In 2020, Americans continue to exercise the right to protest across a wide spectrum of issues: protesting COVID-19 mandates, police misconduct, and school closings, among others. Protest is deeply American.

Little wonder America's Founders protected the rights to peaceably assemble and petition, to speak freely, and related liberties in the First Amendment of the Constitution—securing those liberties in the Bill of Rights. These freedoms are the bedrock of all others. They are the best defense against injustice and the means by which a free people remain so.

Protect free speech and public safety:

- **HB 481** works against the ability of all Americans to freely express themselves and engage in civic life. Due to its vague and overly broad language, the policy would enable those in power to punish, threaten, or chill the speech of peaceable protestors.
- There is a clear and compelling government interest in protecting critical infrastructure and public safety, but that must be done with clear, targeted language that does not chill First Amendment rights.

Clearly define critical infrastructure:

- The bill broadly expands the definition of “critical infrastructure.” While the caveat that the facility must be “completely enclosed by a fence or other barrier that is obviously designed to exclude intruders...” is positive, the concern arises when the bill criminalizes “entering property containing a critical infrastructure facility.”
- In effect, this means an individual could be standing outside a fence or barrier but still be in violation if that individual is standing on “property containing a critical infrastructure facility.”

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Guard against vague language:

Expressive Intent:

- The bill contains vague and overly broad language when it makes it a felony to step onto a property containing a critical infrastructure facility “with the intent to...impeded or inhibit operations of the facility.”
- A sign that argues against a pipeline that states “shut down this pipeline” could easily fall under this standard. In fact, the protests that are targeted by this bill are protesting with the intent to impede and inhibit operations. And this protest could even be standing outside a fence and be prosecuted if they are on “property containing a critical infrastructure facility.”

Criminal Conspiracy

- The bill contains vague and overly broad language that would impact criminal vicarious liability to a broadly defined “organization” that is “found to be a conspirator with persons who are found to have committed any of the crimes.” This standard could be abused to impart criminal liability on an entire group of protestors for the actions of one person.

Civil Liability:

- Finally, the bill contains vague and overly broad language that would impart civil vicarious liability. This is a less concerning provision because the underlying offense is trespass in a critical infrastructure facility, which would require that person to go over a fence or other barrier and is already illegal. However, the overly broad language “compensates, provides consideration to, or remunerates a person for trespassing...” could be used to sweep up protest groups that provide a ride to a protest, or food/water/supplies etc., for an individual that then trespassed.

For more information on Americans for Prosperity-Montana’s legislative priorities, visit AFPMontana.com or reach State Director David Herbst at DHerbst@afphq.org.