



Senate Bill 2044 Testimony

The ACLU of North Dakota opposes Senate Bill 2044, a bill that would increase the legal penalties for tampering with or damaging a critical infrastructure facility or public service.

North Dakota law already prohibits trespass under section 12.1-22-03 and tampering with or damaging a public service under section 12.1-21-06 and conspiracies to commit the same under section 12.1-06-04. There's simply no need for additional law.

During the Senate hearing we brought up several constitutional issues with the bill and unfortunately, our concerns were not remedied in the amendments. Senate Bill 2044 continues to punish association, in violation of the freedom of assembly under the U.S. Constitution.

The bill would criminalize activity far beyond the intentional causing of property damage, extending penalties to behavior such as 'interfering with' or 'inhibiting' the operations of critical infrastructure, terms so vague as to be nearly meaningless. Furthermore, under this bill it would be a class A misdemeanor to knowingly and recklessly damage critical infrastructure and a class B misdemeanor otherwise, allowing the state to impose criminal sanctions on those who might violate this law negligently or accidentally.

A fine of multiples as contained in Section 3 is excessive and might not be able to withstand constitutional challenge. Rendering an organization criminally liable for all damages would impermissibly burden the rights of political association that are protected by the First Amendment – the literal embodiment of guilt by association. For example, if a person is participating in a lawful and peaceful protest organized by a group but breaks away from the group on their own accord and decides to tamper with critical infrastructure, then liability for the individual's actions should rest solely with them and criminal liability should not attach to the group or organization which was not responsible for the actual conduct. The courts can already impose fines and restitution costs for expenses associated with a specific offense. This bill takes discretion away from the capable judiciary by mandating that organizations be fined the same amount as individuals; depriving judicial officers of the ability to use their experience and wisdom to consider the facts unique to each defendant.

In *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 337 (1993) the court held that the city could not recoup costs for cleaning up graffiti from plaintiff—an organization—who had not created the graffiti.

In *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 931 (1982) the court held that, "the First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another. ... For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals

and that the individual held a specific intent to further those illegal aims.” Pp. 458 U. S. 918-920.

Using fines for a political motive or to suppress dissenting points of view violates the Excessive Fines Clause of the U.S. Constitution. In *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989) the court held that the language of the Excessive Fines Clause and the nature of our constitutional framework make it clear that the Eighth Amendment places limits on the steps a government may take against an individual. Using fines for a political motive or to suppress dissenting points of view is unconstitutional.

In summary, North Dakota already has laws on the books to protect critical infrastructure; Senate Bill 2044 is duplicative and unnecessary. This bill’s focus on critical infrastructure facilities belies its neutral purpose – as do its excessive fines.

We encourage the committee to vote NO, on Senate Bill 2044.