

Comments on Senate Bill 33

By Randy Cunningham

I wish to oppose the approval of Senate Bill 33 for the following reasons.

Why is this bill being proposed?

The Legislative Services Commission vets all legislation to make sure it is compatible with existing law and is not a gross violation of the state and federal constitutions. Perhaps there should be a commission created to set proposed legislation within the historical context of its creation. It might be very helpful, or at least educational for members of the legislature.

The context of this legislation is a local, national and even international conflict between the fossil fuel industries and their critics who oppose the activities of that industry for the pollution on air, water and land and for threatening the climate stability of the planet. This has been an asymmetrical conflict. The fossil fuel industries represent the most powerful economic force that humanity has ever known. Forget all the armies and navies that have ever been amassed. Forget the greatest empires that have ever ruled the earth. They are two-bit players compared to the fossil fuel industries. When these industries say jump, most of the world jumps. That is certainly the case with the State of Ohio, which has always been, and continues to be a colony of these industries.

Against them are organizations whose annual level of funding would not equal the weekly expense account of the executives and lobbyists of the industries. Most activists are volunteer citizens who must find time in busy lives that are preoccupied with the demands of home, work and family. That time is found wherever they can manage. The representatives of industry can devote all their working days and nights to promoting, advancing and defending

the interests of their employers and clients. Go to any public or court hearing, and the first few rows of seats are always filled with industry suits.

If there is one historical event that is behind Senate Bill 33 it is the conflict over the Dakota Access Pipeline (DAPL) that occurred at the border of North and South Dakota where a coalition of Native Americans and their supporters blocked the way forward for construction of the pipeline. This conflict is known for the name of a nearby Indian reservation – Standing Rock. The stand off lasted through most of 2016 and into 2017. Local authorities amassed a force of law enforcement and national guard troops that looked as if they were going into battle in Iraq or Afghanistan. They were supplemented by private security companies, many of which had dubious standards for those they employed, and even more dubious standards for how they behaved. Sophisticated surveillance and monitoring equipment were tested and deployed at Standing Rock. Hundreds were arrested. Very few if any of those arrested have been convicted in trials that are still ongoing or are just now being wrapped up. Even though the protesters were eventually defeated by weather, repression and the election of Donald Trump, their fears were vindicated. The DAPL pipeline has leaked like a sieve and continues as a case in point against the wretched and incompetent standards of the company that built it, Energy Transfer which also built Rover pipeline in Ohio - another disaster in motion.

The dust from Standing Rock had not settled, before swarms of bills were proposed across the country by the oil, gas and pipeline companies and their political allies to make events such as Standing Rock illegal or much more difficult and costly to organize. It was pay back time. Many of these bills ranged from bizarre – such as one that made it legal to run over protesters blocking a road – to the clearly unconstitutional with provisions that violated free

speech rights. They were emblematic of “panic” legislation, where those with power and influence say to local and state politicians, “Don’t just stand there! Do something! Those SOB protesters cost me millions!” As a result, many of these were proposed and never seen or heard from again. Luckily for those administering the pay back for Standing Rock, the American Legislative Exchange Council had on the shelf model legislation based on the idea of “critical infrastructure facilities” which means just about anything that proponents want it to mean. And this was the parent of bills such as Senate Bill 33. This legislation has not been received with open arms. It has been rejected or vetoed by both conservative and liberal legislatures and governors. It has a 50/50 rate of passage, depending on how much political muscle its backers have and how much pipelines, fracking wells, and other such facilities are issues in the state.

There are two conclusions to be drawn from this history of bills such as SB 33. The first is that the oil and gas industry and its allied and subsidiary industries are the prime backers and inspiration behind this legislation. Bills such as SB 33 have used the ever-elastic definition of “critical infrastructure facilities” to make these bills Christmas Tree bills, where all kinds of facilities are included – mostly to acquire allies and hide who is really behind these bills. The second conclusion is that this legislation is pay back legislation. There is only one credible target for this legislation – and that is the movement that is opposing the current oil and gas blitzkrieg that is going on throughout the country.

What is not being talked about – civil disobedience and direct action.

While reading through the text of the proposed bill and the written testimony of the supporters of it, I found myself scratching my head at times wondering just what it is they are talking about. I don't know of and have known no group of people or organization that would endorse an action that could conceivably cause physical harm to the public, but there is an infinite number of companies that have caused harm to people in the pursuit of profit. There is a past tradition of what was called monkey wrenching that would indulge in acts of vandalism against say construction equipment. At its most extreme this was represented by the Earth Liberation Front that specialized in arson against developments destroying natural areas. But the ELF did not survive past the blow back over 9-11 and police action that resulted in the arrest and jailing of many of its advocates.

Then there is the issue that is hiding in plain sight. The issue of civil disobedience, which is the practice that 99.9% of the opposition activities a Standing Rock included. Civil disobedience is the non-violent breaking of the law in order to protest a perceived injustice. Its goal in general is to make business as usual impossible for the private or public institutions whose activities are being protested.

At its purest form – what has been called “old school” civil disobedience, those involved in an action cannot in word or deed express any violence towards the authorities or the organizations they confront. They must be totally transparent about what they are doing, and why they are doing it. This includes saying what they are going to do ahead of time. And they must be willing to risk arrest and suffer the consequences of their action. I have been trained in it, and the training can be as rigorous as any military drill. The training usually winnows out

those who should not be involved in such an action because of their temperament, lack of self-discipline or they just realize that this is not for them.

If it were not for civil disobedience Jim Crow would still reign supreme, women would not have the vote and would still be confined to the home, labor would have no rights other than what employers felt like giving them, and gays would still be in the closet.

In the case of SB 33 I have to wonder what the consequences of any act of civil disobedience would be. If there was a “lock down” on a piece of equipment, say a bulldozer, that would prevent it from being used but would otherwise not so much as scratch the paint, would this be considered criminal damaging? Would it be criminal trespass? Criminal mischief? And if those enhanced provisions are not relevant, then just what is the point of it all since there are already more than adequate laws on the books to deal with the offenses committed.

In truth, there have been very few if any cases of protest inspired vandalism in Ohio, and very little use of civil disobedience. For the most part the fears that inspire this bill are fears that only exist in the fantasies of its supporters. They are not a factor in Ohio. What the supporters of SB 33, no matter how many solemn oaths that they take swearing that they love and respect free speech and the right to dissent, want is to intimidate and suppress those rights for those who protest the activities of the oil and gas industry and its allied industries in Ohio. Everything else is white noise.

Is there anything that is not considered critical infrastructure?

The number and range of facilities that are called critical infrastructure facilities in this legislation is awe inspiring. After reading through the page after page of included facilities, you must ask if there is anything that is not covered. Why all the mind killing details? Why not just

be done with it and declare the entire State of Ohio as critical infrastructure? You could take care of everything with just a couple of sentences, instead of going on and on and on. With everything in Ohio so defined, you could accomplish the true goal of the backers of this bill – which is to declare Ohio a Protest Free Zone.

A Conflict of Interest?

The issue must be raised about whether the prime sponsor of this legislation, State Senator Frank Hoagland has a conflict of interest. He is the founder of START LLC, the Special Tactics and Rescue Training security company. This company specializes in serving the oil and gas industry and is a member group of the Ohio Valley Oil & Gas Association. In START literature two areas of service that they offer are “Control protesters” and “Deter ECO resistance plans.” It does not take much imagination to see how SB 33 would benefit Senator Hoagland’s company. But this is not as scary as the motto of START. It is: “Deter, Detect, Defend and Defeat.” This is classic counter insurgency philosophy that is being applied to protected civilian rights of free speech, assembly and dissent. This is not a mentality that should be applied to an opposition. START is not about debating public policy. It is about defeating an enemy as if environmental and community organizations in Ohio who oppose the oil and gas industry, are the equivalent of ISIS or the Taliban. This is an attitude that should stay on the battlefield and not be applied to the streets and communities of Ohio. This is scary stuff and shows the mentality behind this legislation and is reason enough for this legislation to be withdrawn or rejected by the Ohio Senate. This is Ohio, Senator Hoagland, not Anbar Province.

It won't work.

Trying to shut people up about a problem that you have no intention of solving is a fool's errand. Since the founding of the Republic, the powerful have been passing laws such as SB 33 in the hope of shutting up those without power who have some authentic reasons to complain. From slavery to women's rights, to labor rights, to mad foreign military adventures it is built into the genes of Americans to protest and ask for redress of grievances. We are not a cowed and timorous people. We have repeatedly rebelled against perceived injustices, regardless of the legal consequences.

Senate Bill 33 will not prevent or clean up the oil spills that are an inherent part of pipelines. It will not restore farm fields to their original productive state, or marshes and bodies of water to their pristine condition. It will not protect the public or industry workers from air pollution coming from fracking wells, compressor stations, refineries or plastic manufacturing plants. It will not pay the bills for the cancers and other illnesses that are a by-product of the industry it hopes to protect. It will not comfort or support the survivors of industry victims.

The only thing it will do is tell industry critics to shut up if they know what is good for them. And we will not listen. We will not shut up. We will find new ways to respond. We will not give up.

This legislation is a waste of time and those who serve the public in the State House should not be wasting their time or the public's time on this mean and nasty little bill. Vote down Senate Bill 33 and be grateful that it is gone and will not embarrass you in the future.

Randy Cunningham

3623 West Blvd.
Cleveland, OH 44111
216-245-1073 (mobile)