

May 10, 2017

Governor Mark Dayton  
Room 130 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

**Re: Anti-protest provisions in the Judiciary and Public Safety Omnibus Bill (SF 803)**

Dear Governor Dayton,

The ACLU of Minnesota (ACLU-MN) is a nonpartisan, nonprofit organization dedicated to defending the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have over 44,000 supporters throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

I am writing today to encourage you to veto any bill that includes anti-protest provisions, such as those in the Judiciary and Public Safety Omnibus bill (SF 803).<sup>1</sup> This language would increase potential fines and jail time for protesters who obstruct access to freeways, airports, or public transit from the current misdemeanor level to a gross misdemeanor.

The ACLU-MN opposes this language because it is aimed at quelling dissent, it is unnecessary, it will have a chilling effect on the exercise of constitutionally protected speech, and it prescribes punishments that are vastly disproportionate to the offense.

The right to free speech is at the cornerstone of our democracy. 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. It is important to remember that law enforcement agents have an affirmative duty to ensure that the rights of protesters and the press are protected. Over the past year, we have seen an historic level of activism and protest that has spilled out into our nation's parks, streets, and sidewalks — places where our First Amendment rights are at their height. For example, the January 21, 2017

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<sup>1</sup> Article 3, Sections 18 and 24.

Women’s March was likely the single largest day of protest in American history. Unfortunately, we have also seen legislators all over the country react to this historic level of activism by introducing legislation, like that in SF 803, in an attempt to enact heavy-handed punishments designed to chill speech and silence dissent.

On its face, this language is aimed at what can be described as criminal conduct; however, it is specifically and explicitly aimed at conduct that is closely linked with expressive speech and conduct. Throughout our history, we have witnessed acts of civil disobedience from the Boston Tea Party, to the Edmund Pettus Bridge, to student campus occupations protesting the Vietnam war, to the Stonewall riots, to Standing Rock and Black Lives Matter protests today. Although in the moment, those historical protests may not have garnered significant public support, we now celebrate many of them as important turning points.

The bill authors explicitly stated in committee hearings that this effort is targeted at the recent tactics of the Black Lives Matter movement, which demonstrated in response to the officer-involved shooting deaths of Jamar Clark and Philando Castile. While proponents of these provisions argue that they are needed to protect public safety and to ensure that our major transit ways flow smoothly, these anti-protest provisions are unnecessary because we already have ample laws on the books to address demonstrations that get out of hand, including criminal charges. Importantly, neither law enforcement representatives nor concerned members of the public testified in support of these provisions.

This language would have also have an unjustified chilling effect on the exercise of free speech. The 6th Circuit’s decision in *American-Arab Anti-Discrimination Committee, v. Dearborn*, is instructive.<sup>2</sup> The Court assessed a Dearborn ordinance criminalizing participation in a march without a permit. While acknowledging that the city has a clear interest in public safety and traffic control, the court noted that those interests “must be ‘exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions...’”<sup>3</sup> Thus, the risk of running afoul of the ordinance impermissibly chilled speech and “constitutes a burden on free expression that is more than the First Amendment can bear.” The anti-protest provisions in SF 803 ups the ante for people who are considering attendance at a protest. The specter of spending up to a year in jail will likely chill people from participating in demonstrations. Such a chilling effect on speech “constitutes a burden on free expression that is more than the First Amendment can bear.”

Lastly, these bills prescribe punishments that are vastly out of proportion to the conduct at issue. Obstruction of transit ways is an action that often results in inconvenience to travelers. By supporting this bill, you are saying that a person

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<sup>2</sup> 418 F.3d 600 (6th Cir. 2005).

<sup>3</sup> *Id.* at 611 (quoting *Cox v. Louisiana*, 312 U.S. 536, 574 (1965)).

who causes inconvenience to others should receive the same punishment as a person who is found guilty of Assault in the Fifth Degree (Minn. Stat. §609.224), Domestic Assault (§ 609.2242), False Imprisonment (§609.255), Criminal Sexual Conduct in the Fifth Degree (§609.3451) and Malicious Punishment of Child (§609.377). Put simply, the punishment does not fit the crime.

For additional information, attached please find a copy of the ACLU-MN's recent article on this topic published in *The Hennepin Lawyer Magazine*.

Increasing penalties for specific types of protest will not deter the conduct or improve public safety. All these anti-protest provisions will do is send a clear message to Black Lives Matter activists that this type of civil disobedience, used only in times of extreme tragedy to amplify both message and impact, is unacceptable in Minnesota. If dissent is allowed to be silenced under the guise of protecting public safety, we all suffer. With all of the current political turmoil and unrest in this country, now is not the time to punish peaceful protest.

For the many reasons stated above, we respectfully urge you to veto the Judiciary and Public Safety Omnibus bill and any other bills that contain anti-protest provisions.

Sincerely,

Teresa Nelson  
Interim Executive Director