

# The ACLU weighs in on protester bill

- ELIZABETH RANDOL | Special to LNP
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Imagine if Martin Luther King Jr., future U.S. Rep. John Lewis and their compatriots in the civil rights movement had been stuck paying the fiscal costs of Sheriff Bull Connor's harassment, beatings and arrests.

Under a proposal before the Pennsylvania Senate, people who take to the streets to express their political views would have to do exactly that if they end up on the wrong side of the law.

On Aug. 16, four days after the white supremacist demonstrations in Charlottesville, Virginia, Republican Sen. Scott Martin of Lancaster County introduced a bill that could hold protesters liable for public safety costs associated with demonstrations.

Despite the timing, Charlottesville wasn't the primary trigger for this proposed legislation; the Dakota Access Pipeline protests were.

Under Senate Bill 754, courts could hold individuals convicted of protest-related misdemeanors or felonies liable for all public safety costs associated with demonstrations. This legislation is most certainly unconstitutional and would likely be struck down in federal court, but only after a costly legal fight.

While it may bother the primary sponsor and his friends in the energy industry that people of indigenous heritage opposed the pipeline, public protests and demonstrations are strictly protected by our First Amendment rights to free speech and assembly. The expression of those rights may sometimes incur costs, but those are collective public safety expenses that are collectively paid by us through our taxes.

SB 754 proposes two worrisome legal changes, both of which are certainly unconstitutional. First, it unreasonably expands the definition of liability. Individuals convicted of protest-related misdemeanor or felony offenses can be forced to pay for costs not directly resulting from their actions or even related to the crime of which they were convicted.

Courts, of course, can already impose fines and restitution costs for expenses associated with a specific offense. But it would be unconstitutional to hold someone—even those convicted of protest-related offenses—liable for costs associated with other people's actions or costs incurred to provide general public safety support at a demonstration.

Second, SB 754 selectively narrows the potential targets of this expanded liability. General public safety costs are recovered only from specific people engaged in a specific kind of activity, namely protesters exercising their constitutionally protected rights to speech and assembly.

If this bill is enacted, it is doubtful it could withstand a constitutional challenge. In order to protect the First Amendment freedoms of speech and association, the U.S. Supreme Court has sharply limited the government's authority to impose liability on organizations or their members

for misconduct or criminal acts that occur during political demonstrations. Lower courts have similarly rejected attempts to hold demonstrators liable on the grounds that the government can recover their costs through existing civil and criminal sanctions against those directly responsible.

Furthermore, because municipalities generally do not impose responsibility for using public spaces on particular users, holding protesters liable would place an intolerable burden on their constitutional rights. In this context, the measures proposed in SB 754 are constitutionally suspect.

Equally alarming but no less important is the chilling effect this legislation would have on free speech and assembly. The prospect of being held liable for demonstration costs if, for example, you are convicted of obstructing a sidewalk — a misdemeanor offense — may well provide a strong disincentive to participate at all.

SB 754 is not the only bill targeting demonstrators. SB 652 was introduced by Sen. Mike Regan, a Republican representing Cumberland and York counties, in April. It, too, was crafted in response to the Dakota Access Pipeline protests. SB 652 creates a new category of properties, comprising 18 different types of critical infrastructure facilities, and imposes severe penalties for criminal trespassing on those properties. In many cases, what are currently summary or misdemeanor offenses are enhanced to second- and first-degree felonies under this proposed legislation.

Even if neither bill is enacted, the measures they propose offer valuable insight into how our legislators perceive public protests and the worrisome ways they choose to respond.

Free speech is free. The government can't send you an invoice.

[http://lancasteronline.com/opinion/columnists/the-aclu-weighs-in-on-protester-bill/article\\_31919bbc-88e1-11e7-a559-73c4d5014159.html](http://lancasteronline.com/opinion/columnists/the-aclu-weighs-in-on-protester-bill/article_31919bbc-88e1-11e7-a559-73c4d5014159.html)

# Lancaster senator's bill could impose response costs on protesters convicted of crimes

Updated on August 21, 2017 at 8:07 PM Posted on August 21, 2017 at 6:48 PM

By [Charles Thompson cthompson@pennlive.com](mailto:cthompson@pennlive.com)

A Lancaster state senator wants to make certain that one group's exercise of free speech rights don't become an exercise in future tax increases for everybody who lives where the bullhorns were used.

State Sen. Scott Martin's bill was introduced in the aftermath of [the deadly Aug. 12 riots in the streets of Charlottesville, Va.](#)

But its impetus is far more local:

Martin, a first-term Republican, began roughing out his bill after [a conference call he hosted for Lancaster area municipal officials](#) on the costs and consequences of last year's Dakota Access pipeline protests.

Those North Dakota protests, Martin noted in a preface to his bill, racked up more than 330,000 hours of emergency responder support, at a cost of \$38.2 million to state and local taxpayers.

Seven hundred and sixty-one persons were arrested, the bill notes, the vast majority of them from out of state.

Could something like that happen here?

Lancaster, for one, has become a present-day battleground over pipeline construction as gas and oil producers - and their political allies - strive to prime the economic engine that they believe Pennsylvania's deep reserves can be.

[Under Martin's proposal](#), all protesters on any issue would still have the clear right to demonstrate.

But, if they acted up in a way that resulted in criminal misdemeanor or felony convictions, the responding governmental unit involved would be empowered to seek recovery of costs for all necessary first responders.

The bill is already drawing early and fervent objections from civil liberties groups, who argue that it amounts to an unconstitutional penalty on free speech.

"We do not dispute that there are costs associated with these kinds of protests," said Elizabeth Randol, legislative director for the American Civil Liberties Union of Pennsylvania.

"But this is literally what we pay our taxes for."

Randol added there are already other remedies in the law for courts to order restitution for property damage and that type of cost.

But creating the potential of assessing damages for all first response deployed on anyone arrested "would certainly have a chilling effect on speech and on peoples' interest in and desire to assemble."

Martin sees it differently.

The language in his bill does nothing, he pointed out, to bar anyone's right to legally and peacefully protest anything.

But it would, he hopes, deter violence or property destruction by creating real consequences for those who purposely push the envelope and, in the judgement of officers, commit crimes.

"If your goal is to cause harm to individuals or property, there's a price you're going to have to pay for that," Martin told LancasterOnline.com last week, in describing the intent of his legislation.

Martin also noted that to be extra-sensitive to free speech concerns, he has already scaled back the original concept of his bill, which would have held organizers of a protest liable.

The current terms tie the payback provision strictly to those arrested and convicted of offenses graded as misdemeanors or felonies.

Even there, he insists, the law likely wouldn't be triggered for most typical cases of civil disobedience.

The group Lancaster Against Pipelines has [led frequent demonstrations in recent years against the Atlantic Sunrise project](#), including establishment of an [outdoor chapel on the land of an order of Catholic nuns](#) near Columbia.

[Atlantic Sunrise](#) refers to a \$3 billion expansion of the existing Transco natural gas pipeline system, which currently delivers about 40 percent of the natural gas consumed in Pennsylvania.

Martin's bill has been referred to the Senate's State Government Committee, which is chaired by Sen. Mike Folmer, a fellow Republican from Lebanon County.

Folmer, typically a staunch defender of civil liberties, could not be reached for comment Monday.

Gov. Tom Wolf's office, meanwhile, said it was too early for the governor to make a final assessment of the bill. But they added:

"Governor Wolf takes First Amendment protections very seriously, and believes that any law that even potentially limits these rights must be scrutinized extremely carefully."

TUESDAY, AUGUST 22, 2017

## Sen. Martin's Bill Could Impose The Public Costs Of Any Protest On The Protesters

Sen. Scott Martin (R-Lancaster) has introduced [Senate Bill 754](#) that could impose any public costs for dealing with any “public assembly, meeting or gathering” entirely on the individuals doing the protesting if they are convicted of a felony or misdemeanor in connection with that demonstration.

The introductory findings of the bill point to the costs incurred by public agencies during the Dakota Access Pipeline protests as justification for the bill.

“Dakota Access Pipeline protesters created an environment that was so dangerous, the National Guard was called in and school buses could not travel through the area without a police escort. Nobody benefits from a situation like that,” Sen. Martin said. “I appreciate the fact that local protesters [in Lancaster County against the Atlantic Sunrise Pipeline] have remained generally peaceful and respectful of others and have committed to a non-violent approach. They deserve a great deal of credit for that.

“However, if the situation deteriorates to a point similar to the violent and destructive Dakota Access Pipeline protests, then protesters should not be able to walk away from the damage they cause without consequence and expect first responders and taxpayers to deal with the fallout,” said Sen. Martin.

The legislation defines a “demonstration” as, “A public assembly, a meeting or gathering, a rally or protest event, a political rally or event, a demonstration, speech making, marching, the holding of vigils or religious services, and all other like forms of conduct the primary purpose of which is expressive activity or the communication or expression of views or grievances, which has the effect, intent or propensity to draw a crowd or onlookers.”

The legislation continues, “A person is responsible for public safety response costs incurred by a State agency or political subdivision as a result of the State agency's or political subdivision's response to a demonstration if, in connection with the demonstration, the person is convicted of a felony or misdemeanor offense.”

The costs of the public response could be imposed by state or local officials through the courts.

[Click Here](#) to read the co-sponsor memo Sen. Martin circulated to invite colleagues asking them to endorse his legislation.

Senators Scarnati (R-Jefferson), Ward (R-Westmoreland), Hutchinson (R-Venango), Reschenthaler (R-Allegheny), Bartolotta (R-Washington) and Regan (R-Cumberland) are listed as co-sponsors on the bill.

The bill was referred to the [Senate State Government Committee](#) for consideration. Sen. Mike Folmer (R-Lebanon) serves as Majority Chair and can be contacted by calling 717-787-5708 and sending email to: [mfolmer@pasen.gov](mailto:mfolmer@pasen.gov). Sen. Anthony Williams (D-Philadelphia) serves as Minority Chair and can be contacted by calling 717-787-5970 and sending email to: [williams@pasenate.com](mailto:williams@pasenate.com).

### **State Has Protected Citizens From Intimidation In Other Circumstances**

Since 2000, when the [Pennsylvania Environmental Immunity Act](#) or anti-SLAPP (Strategic Lawsuit Against Public Participation) law was passed, any person that “files an

action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where the action or communication is aimed at procuring favorable governmental action.”

On April 25 the Senate voted 42 to 8 to pass [Senate Bill 95](#) (Farnese-D-Philadelphia) that would expand the anti-SLAPP lawsuit protection law to cover a broader class of actions. Sen. Martin voted against the bill. The bill is now in the House for action. [Click Here](#) for a sponsor summary of the bill.

While imposing additional damages on individuals and groups protesting government actions through additional damages imposed by a court is not the same as SLAPP lawsuits, Pennsylvania lawmakers have for the last 17 years protected the right of citizens to make their opinions known about issues before the government.

Like SLAPP suits, which illegally seek to impose legal and other costs on individuals and groups opposing projects to discourage protests and opposition, imposing additional damages would do the same thing, but only with the government imposing the damages, not a private company through a SLAPP suit and court action.

# Why Government Can't Be Allowed to Make You Pay for Free Speech

By [Elizabeth Randol](#), Legislative Director, ACLU of Pennsylvania

**AUGUST 25, 2017 | 3:45 PM**

Imagine if Dr. Martin Luther King, Jr., future Congressman John Lewis, and their compatriots in the civil rights movement had been stuck with the bill for Sheriff Bull Connor's harassment, beatings, and arrests. Under a proposal before the Pennsylvania Senate, people who take to the streets to express their political views would face exactly that if they end up on the wrong side of the law.

On August 16, Senator Scott Martin (R-Lancaster) introduced a bill that could hold protesters liable for public safety costs associated with demonstrations. The primary trigger for this proposed legislation was the protest of the Dakota Access Pipeline, though it was introduced just four days after the white supremacist demonstrations in Charlottesville, Virginia.

Under [Senate Bill 754](#), courts could hold individuals convicted of protest-related misdemeanors or felonies liable for all public safety costs associated with demonstrations. This is most certainly unconstitutional and would likely be struck down in federal court, but only after a costly legal fight.

Mr. Martin and his friends in the energy industry may want to silence people of indigenous heritage who opposed the pipeline, but public protests are strictly protected by the First Amendment. The exercise of the rights of free speech and assembly may sometimes incur costs, but those are public safety expenses which are collectively paid by the public through taxes.

SB 754 proposes two disturbing legal changes. First, it unreasonably expands the definition of liability. Individuals convicted of protest-related misdemeanor or felony offenses could be forced to pay for costs not directly resulting from their actions or even related to the crime for which they were convicted. Courts, of course, can already impose fines and restitution costs for expenses associated with a specific offense. But it would be unconstitutional to hold someone—even those convicted of protest-related

offenses—liable for costs associated with other people’s actions or costs incurred to provide general public safety at a demonstration.

Second, the bill applies this expanded liability selectively. General public safety costs are recovered only from people engaged in a specific kind of activity, namely protesters exercising their constitutionally-protected rights to speech and assembly.

If this bill is enacted, it is doubtful it could withstand a constitutional challenge. The Supreme Court has [sharply limited](#) the government’s authority to impose liability on organizations or their members for the misconduct or criminal acts of others that occur during political demonstrations. Lower courts have similarly rejected attempts to hold demonstrators financially liable on the grounds that the government can recover its costs through existing civil and criminal sanctions against those directly responsible.

Furthermore, because municipalities don’t usually send bills to users of public spaces, singling out protesters would place an intolerable burden on their constitutional rights. There’s no doubt this would have a chilling effect on free speech and assembly. The prospect of being held financially liable for demonstration costs if, for example, you are convicted of obstructing a sidewalk (a misdemeanor offense), is a strong disincentive to participating at all.

SB 754 is not the only bill targeting demonstrators. Another measure, [SB 652](#), was introduced by Senator Mike Regan (R-Cumberland and York) in April. It, too, was drafted in response to the Dakota Access Pipeline protests. SB 652 imposes severe penalties for criminal trespassing on 18 different types of critical infrastructure facilities. In many cases, what are currently misdemeanors or other minor offenses are enhanced to second and first degree felonies under this proposed legislation.

Both of these bills are attacks on free speech and assembly. The government can’t be allowed to send you an invoice for exercising your constitutional rights.