

2017 HOUSE JUDICIARY

HB 1426

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1426
1/30/2017
27585

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to riot offenses; and to declare an emergency.

Minutes:

1,2,3,4

Chairman K. Koppelman: Opened the hearing on HB 1426.

Rep. Porter: This deals directly with penalties for rioting and inciting a riot. This has been used in the situation south of us more than it has ever been used before so I think it is relative due to the protests we have had to make sure that the people who are doing this are charged accordingly.

Representative Paur: There are quite a few references to a person. Should we leave it that way or should we change it to an individual?

Rep. Porter: I think if there is a business entity that is inciting this rioting they are also responsible so I would leave that up to you. Personally I have no problem leaving it as a person.

Representative Klemin: If a business is an individual is found guilty of an offense there are organizational fines that apply under our criminal code. We don't throw businesses in jail, but we do fine them.

Representative Vetter: Looks like this bill is just raising it from Class C felony to Class B felony. A Class B misdemeanor to a Class A misdemeanor so we are just raising the e penalty. Do you feel like this is appropriate? Are we going to deter future events?

Rep. Porter: You can look at it from the aspect of deterring for a person being involved in this and I am the person inciting the riot and I get charged with a B misdemeanor and go bail out; then I can be right back out there doing the same thing and putting lives in danger day after day. There comes a point where it is nice to think of it was a deterrent. At some point you have to be taken out of the game and this bill does that also.

Representative Magrum: So when you declare an emergency how does that work?

Rep. Porter: s. That would depend on the process to get through and it becoming a law.

Chairman K. Koppelman: Explained how the emergency clause work. Has this statue been used south of Mandan?

Rep. Porter: I do not know. Explained an incident at the NAPL that happened down there.

Representative Vetter: Is there a definition of a riot and a protestor?

Jonathan Byers, Attorney General's Office: (#1) It is a bump up in penalty class. Can this be applied to peaceful protest? Riot means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons.

Representative Vetter: It could be a protest to start and then turn into a riot? Is everybody part of that riot? Could they all be charged with this then?

Jonathan Byers: They would have to prove within a reasonable doubt you are the one who turned it from a protest into a riot. Under the second subsection they would have to prove that you armed the rioters and then the third subsection, which is the misdemeanor offense they would have to prove beyond a reasonable doubt that you engaged in the riot.

Chairman K. Koppelman: When there is a protest that is peaceful and the rest remain calm and they are making their concern known and a few cross the line. How do you see the distinction?

Jonathan Byers: Once a riot is already happening and law enforcement shows up and they say we have a riot going on and we order you to disperse that is where you could be guilty when you remain there even if you are not protesting. They have been given a reasonable public safety order to move, disperse or refrain from specified activities and you don't listen to that. None of these are creating new criminal offenses.

Chairman K. Koppelman: Yes, that is existing law.

Bruce Burkett, ND Peace Officers Association: (15:10-20:36) (#2, #3) (Passed around some pictures) Went over the pictures. Riots in ND have been rare. Will email these picture to the representatives, if they want them?

Representative Klemin: This bill doesn't change anything. It just increases the penalties? Why do we need to increase the penalties?

Bruce Burkett: A higher penalty can be a deterrent.

Representative Klemin: Has anyone been charged with a riot under the existing law as a result of this activity in these photographs?

Bruce Burkett: I have not been involved in any actual activities. I saw it from a distance. I was in an airplane.

Opposition: None

Hearing Closed.

Carel Two-Eagle testimony #4 (Handed in after the meeting.)

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1426
2/1/2017
27775

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to riot offenses; and to declare an emergency.

Minutes:

Chairman K. Koppelman: Opened the hearing on 1426. Read the definition of a riot.

Representative Vetter: I was quoted by the news media. There is a certain officer who gets to declare it is a riot. Everybody disperse so you have 150 people there; 25 are causing problems and then the guy in charge says everybody disperse. Now it is an official riot. So we have 125 people ready to get a Class B felony. How do you define a riot?

Do Not Pass Motion Made by Rep. Simons; Seconded by Rep. Vetter.

Discussion:

Representative Nelson: How do I know which guy should declare it is a riot? Everyone has a different story. I do not think they should be high level felons.

Roll Call Vote: 10 Yes 4 No 1 Absent Carrier: Rep. Simons

Closed.

Date: 2-1-17
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1426**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Simons Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls		✓	Rep. Nelson	✓	
Rep. Blum		✓			
Rep. Johnston		✓			
Rep. Jones		✓			
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 10 No 4

Absent 1

Floor Assignment : Rep. Simons

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1426: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1426 was placed on the Eleventh order on the calendar.

2017 SENATE JUDICIARY

HB 1426

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1426
2/13/2017
28272

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to state employee claims of employment discrimination.

Minutes:

Testimony attached #

1,2

Chairman Armstrong called the committee to order on HB 1426. All committee members were present.

Todd Porter, North Dakota state Representative District 34, introduced and testified in support of the bill. No written testimony.

"This is known as the enhancement bill. This is a piece of the North Dakota Century Code that hasn't been used since zip to zap. So when we look at this, folks that follow me use words as reactionary and unnecessary. My counter to that is that when things happen it is our responsibility to look at the laws and look at things and make sure they are in place properly and they are working and that the penalty does fit the crime.

It would be outside of our responsibilities to not look at things. When you think of a protest, and you think about carrying a sign on a picket line or in front of a building or wherever, and you think about letting your 1st Amendment rights be known, that is a big difference than inciting a riot, or a mob, or causing somebody bodily harm. Would we have these bills in front of you today if we did not have any of these events? I think we will probably need something like this in the future, especially with future energy projects."

Representative Porter discussed some of the violent things that protesters have done in the past that risked the lives of the people, law enforcement, and others that were around them.

"The North Dakota Pipeline Authority gave us a figure that for every dollar off of the gap between West Texas Intermediate and North Dakota Suite, for every dollar that that moves because it lessens that margin to get that oil to the market, is 75 million dollars a biennium to the state. So, there is economic impact inside of what is going on. If we see this in the future than we will need something like this. I recommend a Do Pass on this bill."

Chairman Armstrong: "As I look at this, essentially, for failing to listen to a judicial order we enhance that from a Class B Misdemeanor to a Class A Misdemeanor. As far as I'm aware, this is the only place in the Century Code where failure to respond to a judicial order is only a Class B Misdemeanor. Everywhere else I know it to exist, violating a law enforcement

order is at least a Class A Misdemeanor, and under certain conditions can be a felony. So the major change in this bill is changing the charge of inciting a riot from a Class A Misdemeanor to a Class C Felony?"

Representative Porter: "Correct."

Jonathon Byers, Attorney General's Office, testified in support of the bill. No written testimony.

"This bill does not create a new crime nor does it extend to conduct that's not already a crime. The definition of a riot means a public disturbance involving five or more people that creates danger of damage of property and persons or affects law enforcement. It has to be tumultuous and violent. I think the Chairman is correct that the refusal to submit to a judicial order is treated more severely in other parts of the Century Code that don't involve tumultuous and violent conduct. So certainly I think these elevations of penalty classes are warranted."

Senator Nelson: "Part of that definition impedes law enforcement, what about impedes regular people trying to use the sidewalk?"

Jonathon Byers: "I don't think that would cover it simply by what you are talking about, but if law enforcement comes to try to clear that area and they don't listen, then that would be covered."

Julie Ellingson, North Dakota Stockman's Association, testified in support of the bill.

"Just want to say quickly that we support this bill and this issue has affected our members."

Bruce Burkett, North Dakota Peace Officers Association, testified in support of the bill. (see attachment 2). Bruce discussed some issues in the past involving riots and how he believes it puts individuals and properties at risk.

"They can prevent traffic and keep more than 100 people away from their destination." He handed out pictures which showed protesters blocking the streets so people couldn't get to their desired locations, and how it can impede traffic or cause issues in the community.

Aaron Birst, Association of Counties, briefly testified in support of the bill. No written testimony.

"I'm speaking for prosecutors regarding this, we feel this is an important bill and we support it. We feel this situation of what we've seen the last few months isn't working and we should take the appropriate next step."

Chairman Armstrong: "Nobody can recall charging riot situations in or out of prison. Are you aware of anywhere else this has been charged?"

Aaron Birst: "In my 17 years I have never seen it happened."

Chairman Armstrong: "This bill right here is a response to the DAPL protest, correct?"

Aaron Birst: "I'd agree with that."

Andrew Alexis Varvel, North Dakota citizen, testified in opposition of the bill. (see attachment 1)

Chairman Armstrong closed the hearing on HB 1426.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1426 Committee Work
2/14/2017
28369

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to state employee claims of employment discrimination.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on HB 1416. All committee members were present.

Senator Larson motioned Do Pass. **Senator Luick** seconded.

Discussion followed:

Chairman Armstrong: "I'll walk through this really quickly for everybody."

Chairman Armstrong described what he constitutes as a major change of things which is section 1, which is instigating a riot. It will move the charge from Class A Misdemeanor to a Class C Felony. Section 2 makes it a Class B Felony relating to firearms, dangerous weapons, or destructive device. Chairman Armstrong said that just makes it consistent with every other crime involving firearms, dangerous weapons, or destructive devices in the code right now.

"Essentially, at the end of the day, the one major policy change in this bill is enhancing the instigation of a riot from a Class A Misdemeanor to a Class C Felony."

Senator Myrdal: "Can you tell me the definition of a riot in the Century Code?"

Chairman Armstrong: "A public disturbance involving an assemblage of 5 or more persons, which by tumultuous and violent conduct creates grave danger or damage to property or persons, or substantially obstructs law enforcement or other government functions."

A Roll Call Vote was taken. Yea: 5 Nay: 1 Absent: 0.
The motion carried.

Senator Larson carried the bill.

Chairman Armstrong ended the discussion on HB 1416.

REPORT OF STANDING COMMITTEE

HB 1426: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO PASS**
(5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1426 was placed on the
Fourteenth order on the calendar.

2017 TESTIMONY

HB 1426

1426

CHAPTER 12.1-25
RIOT

#1
1426
1-30-17

12.1-25-01. Inciting riot.

1. A person is guilty of an offense if he:
 - a. Incites or urges five or more persons to create or engage in a riot; or
 - b. Gives commands, instructions, or directions to five or more persons in furtherance of a riot.
2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under section 12.1-06-01, 12.1-06-03, or 12.1-06-04 of attempt, solicitation, or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section.
4. The offense is a class C felony if it is under subdivision b of subsection 1 and the riot involves one hundred or more persons. Otherwise it is a class A misdemeanor.

12.1-25-02. Arming rioters.

1. A person is guilty of a class C felony if he:
 - a. Knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot;
 - b. Teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or
 - c. While engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device.
2. "Riot" has the meaning prescribed in section 12.1-25-01.

12.1-25-03. Engaging in a riot.

1. A person is guilty of a class B misdemeanor if he engages in a riot, as defined in section 12.1-25-01.
2. The provisions of subsection 3 of section 12.1-25-01 are applicable to attempt, solicitation, and conspiracy to commit an offense under this section. Mere presence at a riot is not an offense under this section.

12.1-25-04. Disobedience of public safety orders under riot conditions.

A person is guilty of a class B misdemeanor if, during a riot as defined in section 12.1-25-01, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

HB 1426

#2
1426
1-30-17

Chairman Koppelman and members of the Judiciary committee as a lobbyist for the North Dakota Peace Officers Association; I am appearing to provide support for updating provisions of North Dakota Century Code 12.1-25. If a Riot is conducted by 100 persons or more, the penalty changes from a misdemeanor to a Class C felony. It becomes a Class B felony if the person knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot; or teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or while engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device. In addition if a person is engaged in a Riot who disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot is guilty of a class A misdemeanor. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene. All the additions to 12.1-25 consist of changes into the class of violation as the bulk of the statute is current law.

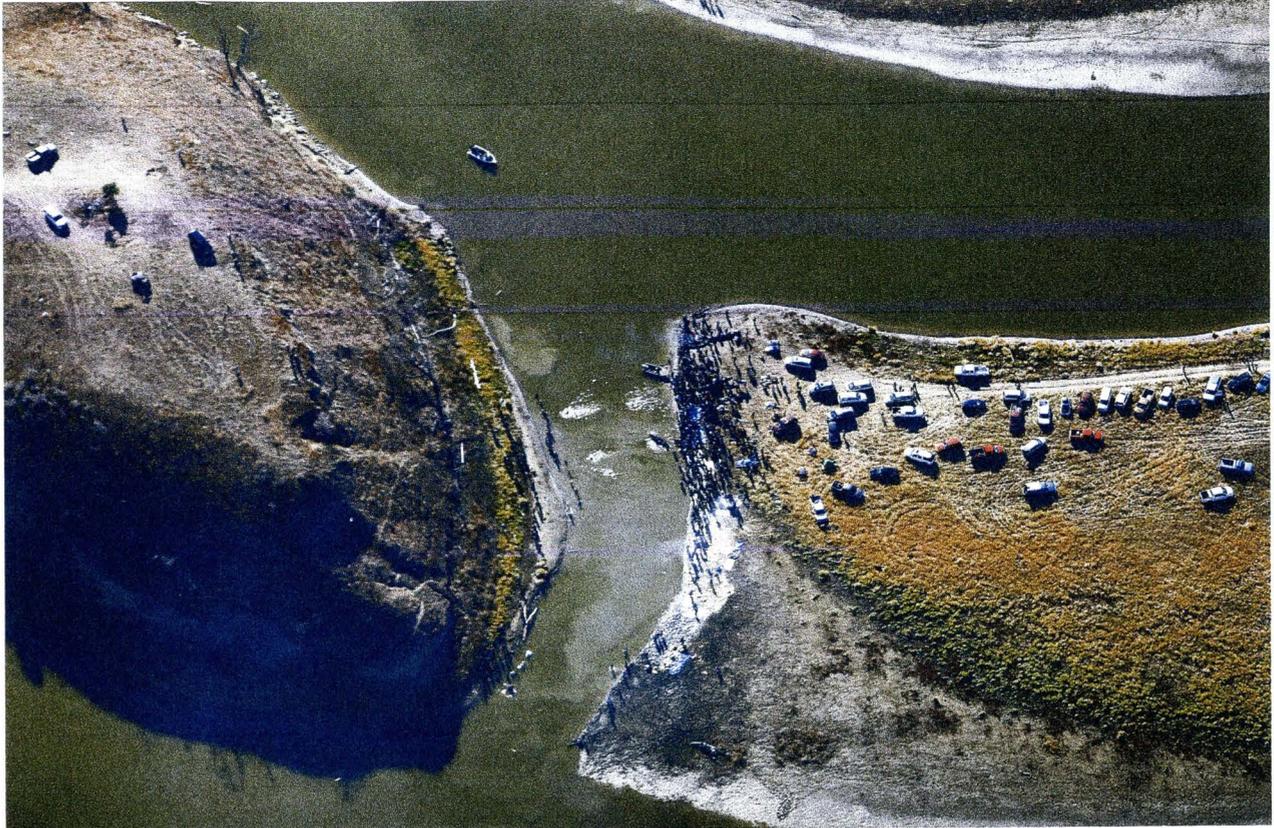
Historically riots in North Dakota have been rare unless some of you are old enough to remember the Zip to Zap in 1969. The events of the past six months have shown the impacts riotous activity can create in the everyday life of our citizens.

The presence of a large number of participating persons creates an atmosphere of intimidation, menacing and anxiety. When a riot confronts law enforcement officers, then follows into public spaces individuals and property are at risk. Attached below are several examples of what can be considered a riot!!

Bruce Burkett

NDPOA 283 lobbyist

#3
1426
1-30-17



November 2nd 2016; Oct 28th below



#3



Nov 17^t



#4
1426
1-30-17

TESTIMONY RE HB 1426, 01/30/2017
CAREL TWO-EAGLE, PK

Section 1. AMENDMENT, lines 7-9: Appears to define a riot as a gathering of 100 or more persons. Thus if my family gathered in a park, and considering the racist nature of law enforcement in Morton County, including in Mandan, we could be charged with rioting, because I can assure you of the Committee, such a gathering will be more than 100 persons. We sing, we chant, we dance – all of which can make noise and in a racist state such as North Dakota, all could – likely, would – bring us charges of rioting. This is hogwash – but that’s the nature of racism.

My second objection to this section is the increase in penalties from misdemeanors to felonies. This is excessive, unless there is considerable and *obviously* intentional damage to property or persons. It is typical of ‘law enforcement types’, whose general view of ‘civilians’ – their term for people not in law enforcement – is jaundiced at best. I was married to a good cop (now deceased), and he told me this, as have other people I know who are or have been in law enforcement. They would love to see a police state. It is your job to see that they don’t hoodwink you into giving it to them.

If there are such high-energy protests, there is a good reason for them. To charge people with felonies for exercising their Constitutional Rights is un-Constitutional, not to mention singularly offensive to people who pride themselves on the concept of freedom for all. Nothing in the Constitution says that there is a maximum passion level that is acceptable. Thus I believe you should not raise the penalties above the current levels so long as there is no property damage. Misdemeanor is sufficient for the great majority of incidents – if there are any at all.

Section 3. AMENDMENT. Simply being there does not constitute engaging in a riot. Refusal to leave when exercising Constitutional Rights, such as to pray *anywhere, anytime* does not constitute engaging in a riot. Rights, according to the US Supreme Court, cannot be given or taken by anyone. This includes law enforcement. To allow them to decide and/or define where or when is fascist and is un-Constitutional.

In the case of the Water Protectors, all activities have taken place on Treaty Lands, and therefore are not subject to state, county or municipal law. Treaties are legal contracts between Nations and cannot be changed or abrogated by any one or any means, since the original makers of the Treaties are dead. This is from the 1972 Crabb Decision, which I helped get. I wrote the rough draft of the final argument the lawyers used to get the Crabb decision.

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Because Treaties are contracts between Nations, they are not subject to laws of states, counties or municipalities. Sovereignty is a fact, not a fantasy. “Tribes” is another word for “Nations”, the same as “Reservations”.

Although the original Treaties were later changed, it was generally at gun point or through various means of coercion, such as withholding our Treaty payments of food, clothing, blankets, and so on. There is ample evidence in the historic record. The Taken Lands of the Pick-Sloan Project were taken at gun point – there is at least 1 photo in the State Historical Society Archives proving it. That particular photo has been published in a number of historic books.

Section 4. AMENDMENT. Says ... if the person disobeys a reasonable safety order, etc. I believe this violates First Amendment Rights to peaceably assemble – no permit is needed for this, according to the Bill of Rights – and to pray *anywhere, any time*. No permit can be required for that – again, refer to the Bill of Rights and the US Constitution in the relevant sections. There are racist police in North Dakota, the same as anywhere else in the nation. This is fact, not fantasy – I have prepared or helped prepare dozens of ACLU complaints in the past 20 years, as a function of the Prayer which focusses the Holy Pipe (ie, Ch’annunpa) with which I Walk. That Prayer is called the prayer of The Four Winds. It is a prayer to heal the Sacred Hoop. Everyone is part of the Sacred Hoop.

Section 4 lines 5 and 6 says “A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.” The Water Protectors at Standing Rock have been ordered to stop praying by such officials. We have not. The Water Protectors at Standing Rock have been sprayed with freezing water, struck with projectiles, gassed, and otherwise treated poorly by “law enforcement” personnel *while exercising our Constitutional Rights* and while exercising them *on Treaty Lands*. Keep in mind, members of the Committee, virtually all the land involved in the supposed riots is Treaty Land. For a variety of reasons, the theft of those lands by various “renegotiations” has not been taken to court, but we have been under ongoing dedicated attack for centuries, so this is not surprising.

As things currently are, there is plenty of protection in law in regard to the subject of “riots”; nothing new is needed, nor is there any need to increase penalties.

Please recommend “Do NOT Pass” on this bill. Thank you for hearing me in a good way now. If anyone has questions, they can call or text me at 701-426-0851. Carel Two-Eagle

2

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2/13/17

House Bills 1293 & 1426

Chairman Armstrong and Members of the Committee:

My name is Andrew Alexis Varvel.

These comments are addressed to HB 1293 and HB 1426, but they apply to all four bills this morning.

We are facing prison overcrowding. We face a major budget shortfall. And now, this bill proposes to increase the burden to our prison system because some people are mad at political demonstrators. At a time when we are in desperate need of paring down the criminal section of the Century Code, these bills propose to increase penalties for existing offenses and create new ones. This is going in the wrong direction.

Any legislator who imagines that these bills will necessarily deter future protests would be sadly mistaken. Protests generally happen in reaction to a perceived injustice. Would it have been wise for law enforcement to massively arrest members of the Tea Party for rioting at congressional town halls? I don't think so. Moreover, we need to consider the effect these very bills may have upon out-of-state protesters. Increasing the criminal penalties for protest would likely increase the motivation of ideologically committed protesters to come to North Dakota. The harsher the legislative reaction against protests, the more the protests become a celebrity cause. Far from deterring protests, punitive legislation stands a good chance of practically functioning as an incitement to riot.

As a resident of North Dakota, I do not look fondly upon the possibility of the North Dakota State Penitentiary serving as a classroom for a new generation of political radicals. It's happened before. Maze prison in Northern Ireland, Robben Island in South Africa, and Camp Bucca in Iraq come to mind. A prison sentence in North Dakota should not become a badge of honor to pad the resumes of aspiring political radicals.

The original Boston Tea Party was a bona fide riot. That riot caused economic harm to the British East India Company. The men dressed up as fake Indians to disguise their identities. But then, the British Parliament reacted so vindictively that it inflamed colonial opinion against the Crown. Closing Boston Harbor was unwise.

There's an old joke from Apartheid South Africa. "When an Afrikaner wants to break a chap's heart, he makes a law."

<http://www.noeasyvictories.org/congress/uscg002.pdf>
(Page 176 of the .pdf file)

North Dakota needs to deal with political protests in an intelligent and pragmatic manner. The Legislature needs to avoid becoming a party to escalating a tense situation. I think we are all agreed that the Senate Judiciary Committee is under immense political pressure to not only recommend these bills but push them through as fast as possible, so withstanding that pressure won't be easy. I hope this committee acts with courage and deliberation to put brakes on what are clearly punitive measures against pipeline protests.

I recommend a DO NOT PASS on all four of these bills.

HB 1426

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Bruce Burkett

NDPOA 283 lobbyist



Nov 17th 2016 Mandan Wells Fargo





November 2nd 2016; Oct 28th ~~below~~ Above





Nov 2nd 11:30am; below 12:25pm

