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Across the U.S., Anti-Protest Laws Target Movements for Climate and Racial Justice

6-8 minutes

By Karen Sokol

As people nationwide are [courageously](#) fighting for Black lives by exercising their First Amendment rights to protest, even in the face of [widespread police violence](#), 28 anti-protest bills are [pending](#) in 18 state legislatures and in Congress. Thirteen states have already [enacted](#) such legislation, with a total of 23 anti-protest laws currently in force. Indeed, these laws' clear targeting of the exercise of free speech is so alarming that the rapid pace of their enactments all over the country led the [International Center for Nonprofit Law](#) to create a "[U.S. Protest Law Tracker](#)."

The legislation has come in two waves, the first starting in 2016 in response to protests inspired by a police officer's shooting of Michael Brown, an unarmed Black teenager, in Ferguson, Missouri and the [creation of the Black Lives Matter Global Network](#). The legislation takes aim at the protests Brown's killing inspired, the same sort taking place across the nation now. In 2018, for example, [West Virginia enacted a law](#) immunizing police from liability for the death or injury of anyone present at a "riot or unlawful assembly." Several impose heightened penalties for [participating in or inciting a riot](#). Others bills criminalize [masks](#) or anything else that conceals a portion of a person's face in circumstances that would often apply in protests. Such coverings have taken on a new purpose amidst the COVID-19 pandemic, but they also offer protection from tear gas and pepper spray.

The second wave of legislation began in 2017 and criminalizes protests near oil and gas pipelines and other fossil fuel industry infrastructure. The oil and gas industry [began lobbying](#) for such restrictions in response to the protests led by the Standing Rock Sioux Tribe against construction of the Dakota Access Pipeline, which poses hazards to the [tribe's drinking and irrigation water, food such as fish](#), and [sacred](#) burial and prayer sites in North Dakota. [Police violently](#) attacked pipeline protesters with dogs, water cannons, tear gas, and other weapons. The courageous exercise of free speech rights in the face of such brutality prompted the Obama administration to [halt](#) pipeline construction, a decision Donald Trump [promptly reversed](#).

Now operational, that pipeline sends oil south toward the Gulf of Mexico. Some of it flows to the Bayou Bridge Pipeline in Louisiana, a [160-mile stretch that ends in St. James Parish](#), a small Black community continually assaulted by toxins emitted by the petrochemical complex commonly known as "Cancer Alley." Like those calling for an end to racist police brutality in protests all over the country, [the St. James community has been engaging in protests](#) calling for an end to racist environmental brutality wrought by the polluting facilities sited in their home.

"These anti-speech laws should never have been proposed or enacted. By design, they criminalize constitutionally protected conduct and further [militarize](#) a violent police system [built on racism](#). If state legislators and members of Congress believe Black lives matter, they should reject all such pending bills and repeal those currently on the books."

These laws target protests of oil and gas pipelines and the polluting facilities they feed by declaring them “critical infrastructure” and making the unauthorized entry in or around them felony offenses subject to draconian penalties of imprisonment and fines. The oil and gas industry has been successful in its effort to silence protesters by criminalizing dissent essential to any just society: Since 2017, 11 states, including Louisiana and North Dakota, have enacted such legislation. Notably, three of those states enacted anti-protest “critical infrastructure” legislation under the cover of the COVID-19 pandemic. Louisiana’s governor just vetoed a bill that would have made the penalties stiffer still. Meanwhile, a bill is currently pending at the federal level.

As we saw with the protests against the Dakota Access Pipeline and have seen again over the past several weeks, protest is powerful. The message of the Black Lives Matter movement, which supported the Standing Rock Sioux Tribe, has moved into the mainstream, so much so that it has been embraced by large corporations that ordinarily duck controversy. Even the National Football League, which has punished Colin Kaepernick for four years for his Black Lives Matter protest, and NASCAR, which markets with heavy doses of flag-waving and military flyovers, have felt compelled to respond, with the NFL saying it now embraces the BLM movement’s message and NASCAR banning the white supremacist symbol of Confederate flags at its events. Moderate police reform legislation is beginning to move in legislative bodies across the country, school districts are removing police from their campuses, and a meaningful national conversation has begun about, as Professor Khalil Gibran Muhammad put it in a recent interview, “not just police reform and accountability, but the prospect of a new vision of a relationship between state authorities and the health of a community.”

All that has come about because thousands are exercising their First Amendment rights, loudly, proudly, and courageously, in the midst of a pandemic that has been particularly deadly for Black people because of myriad existing racist inequities, and in the face of militarized police forces in riot gear armed with teargas, pepper spray, and rubber bullets. What stands out is the urgent and loving message that Black lives matter, and police brutality and other forms of systemic racism must no longer be tolerated.

That it is precisely why, in the context of environmental violence by oil and gas concerns, such messages are a problem for the industry. If protests by committed activists shine a light on the outrageous harms the industry perpetrates, policymakers will no longer be able to ignore demands for protections and structural change. That’s exactly what the industry fears.

It bears mention that all of the International Center for Non-Profit Law’s programs are regional, save one: Its only country-specific program is the United States. These anti-speech laws should never have been proposed or enacted. By design, they criminalize constitutionally protected conduct and further militarize a violent police system built on racism. If state legislators and members of Congress believe Black lives matter, they should reject all such pending bills and repeal those currently on the books.

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