

This Bill is Unnecessary. It's frivolous and vindictive legislation. It's an outsider's bill, virtually a copy paste document from ALEC.

The Bill Violates the U.S. Constitution. It seeks to silence protests against pipelines, fracking wells, injection wells and cracker stations. It violates and intimidates Ohioans' right to free speech and free association and labels those acts as a crime. The Bill's vague language could entrap landowners with infrastructure on their property and it paves

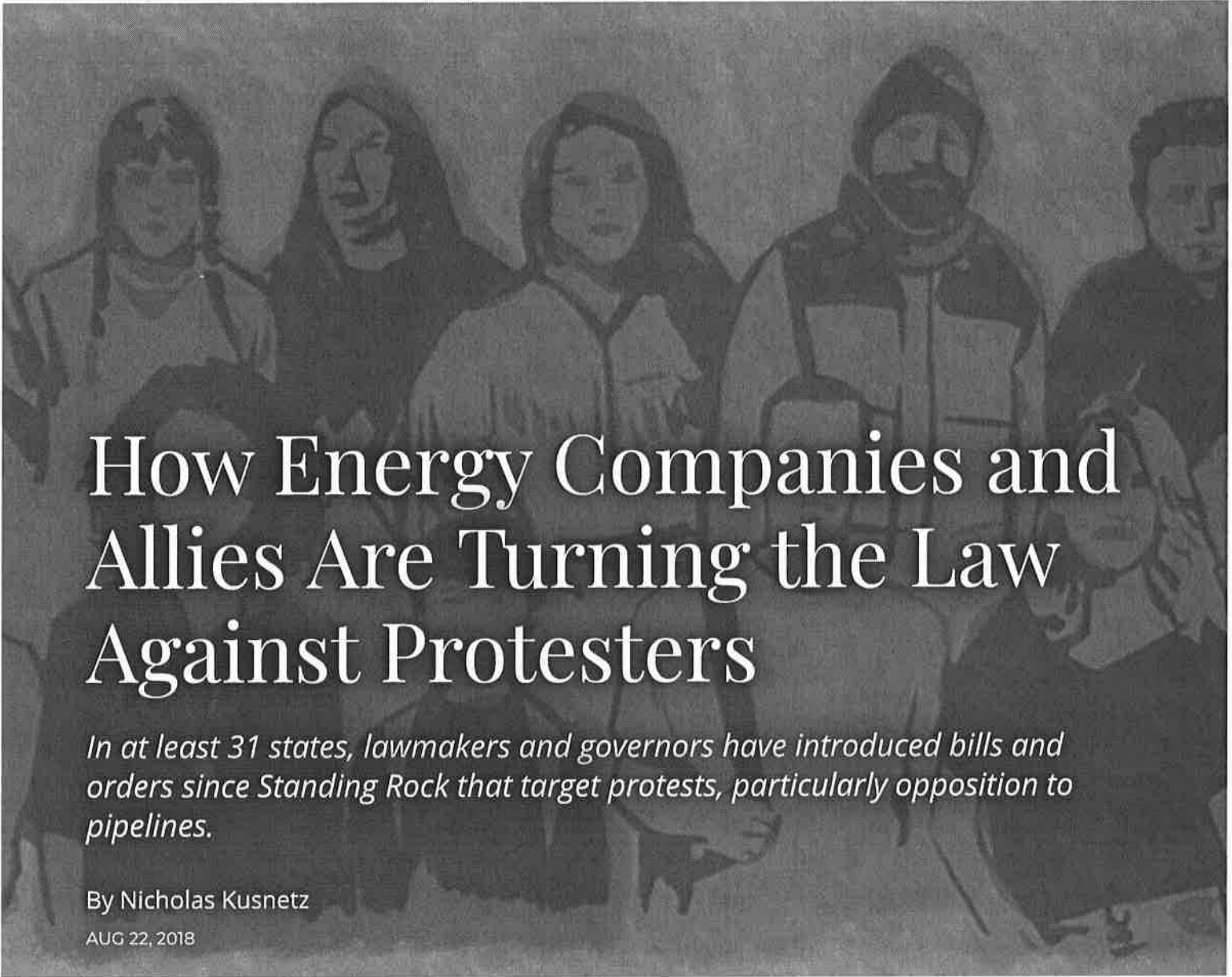
the way for industry to use eminent domain for pipelines and power lines and to use language in the bill to claim landowners are "impeding" their commercial interests.

This Bill Violates Ohio's Constitution, the one bill one subject rule, creating two separate and very distinct crimes: impeding critical infrastructure and critical infrastructure trespass.

I am also including a pdf of a news report that speaks volumes as to why this type of legislation is so wrong.



A Pulitzer Prize-winning, non-profit, non-partisan news organization dedicated to covering climate change, energy and the environment.



How Energy Companies and Allies Are Turning the Law Against Protesters

In at least 31 states, lawmakers and governors have introduced bills and orders since Standing Rock that target protests, particularly opposition to pipelines.

By Nicholas Kusnetz

AUG 22, 2018

A version of this ICN story was published in the [Washington Post](#).

The activists were ready for a fight. An oil pipeline was slated to cross tribal lands in eastern Oklahoma, and Native American leaders would resist. The Sierra Club and Black

Lives Matter pledged support.

The groups announced their plans at a press conference in January 2017 at the State Capitol. Ashley McCray, a member of a local Shawnee tribe, stood in front of a blue "Water is Life" banner, her hair tied back with an ornate clip, and told reporters that organizers were forming a coalition to protect native lands.

They would establish a rural encampment, like the one that had drawn thousands of people to Standing Rock in North Dakota the previous year to resist the **Dakota Access Pipeline**.

The following week, an Oklahoma state lawmaker **introduced a bill** to stiffen penalties for interfering with pipelines and other "critical infrastructure." It would impose punishments of up to 10 years in prison and \$100,000 in fines—and up to \$1 million in penalties for any organization "found to be a conspirator" in violating the new law. Republican Rep. Scott Biggs, the bill's sponsor, **said he was responding** to those same Dakota Access Pipeline protests.

The activists established the camp in March, and within weeks the federal Department of Homeland Security and state law enforcement wrote a field analysis identifying "environmental rights extremists" as the **top domestic terrorist threat** to the Diamond Pipeline, planned to run from Oklahoma to Tennessee. The analysis said protesters could spark "criminal trespassing events resulting in violence." It told authorities to watch for people dressed in black.

An FBI team arrived to train local police on how to handle the protest camp.

McCray recalls a surveillance plane and helicopters whirring above the Oka Lawa camp. Demonstrators were pulled over and questioned on their way in or out, though the local sheriff said people were only pulled over for violating traffic laws.

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In May the governor signed the bill to protect critical infrastructure. Merely stepping onto a pipeline easement suddenly risked as much as a year in prison.

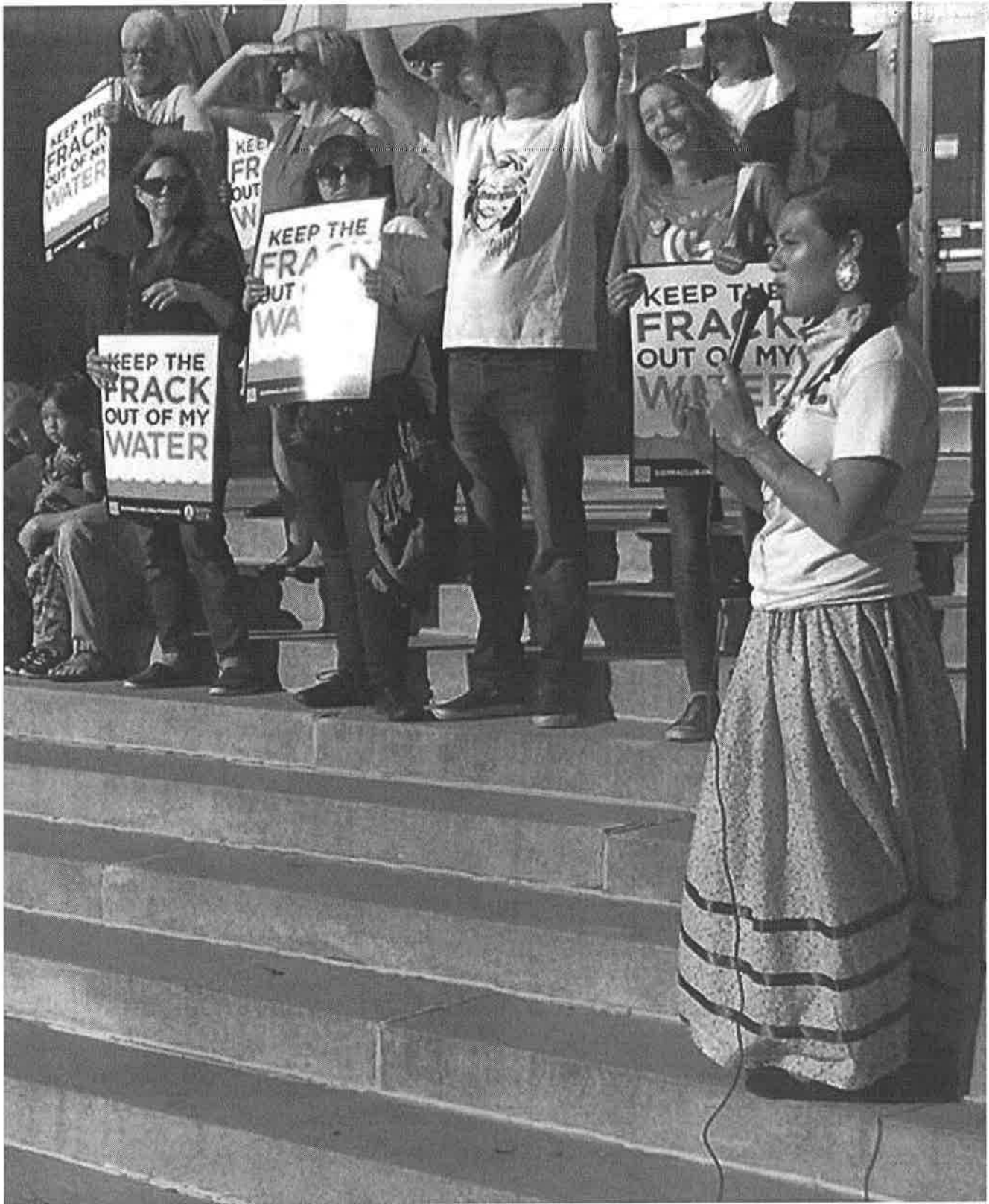
"That was really pretty successful in thwarting a lot of our efforts to continue any activism after that," McCray said.

Oka Lawa never drew the kind of participation and attention that made the Dakota Access Pipeline a national cause, and the Diamond Pipeline was completed quietly later that year.

McCray has since channeled her energy toward politics, running for a seat on the Oklahoma Corporation Commission, which regulates the energy industry. But even as a candidate, McCray says, she now watches her words and her Facebook posts, afraid of being implicated as a conspirator if someone were to violate the law, even if she doesn't know the person. "I don't feel safe, honestly," she said.

Across the country, activists like McCray are feeling increasingly under assault as energy companies and their allies in government have tried to turn the law—and law enforcement—against them.

In Louisiana, which enacted a similar law in May, at least **nine activists have been arrested** under the new law since it went into effect on Aug. 1. In one incident, three people were pulled off a canoe and kayak after they maneuvered the



Ashley McCray says Oklahoma's new law has made protesters think carefully about what they have the freedom to say.
Credit: Johnson Grimm-Bridgwater/Oklahoma Sierra Club

boats on a bayou to protest construction of an oil pipeline.
The arrests were conducted by off-duty officers with the state

Department of Public Safety and Corrections who were armed and in uniform, but at the time were working for a private security firm hired by the pipeline developer.

Dozens of bills and executive orders have been introduced in at least 31 states since January 2017 that aim to restrict high-profile protests that have ramped up as environmentalists focus on blocking fossil fuel projects.

In addition to Oklahoma's infrastructure bill and similar legislation enacted in two other states, these bills would expand definitions of rioting and terrorism, and even increase penalties for blocking traffic. **Twelve have been enacted**, according to the International Center for Not-for-Profit Law. The bills have all come since the election of President Donald Trump, who **openly suggested violence** as a way to handle protesters on the campaign trail, and once in office **called the nation's leading news organizations** "the enemy of the American people."

At the same time, law enforcement and private companies have conducted surveillance on campaigners, while some federal and state officials have suggested pipeline protesters who break laws be charged as terrorists. Corporations have hit landowners and environmental groups with restraining orders and hundred-million-dollar lawsuits.

Some pipeline opponents have conducted dangerous and illegal stunts, cutting pipelines **with oxyacetylene torches** or **closing valves**. But most protests have been peaceful. If they've broken laws by trespassing, activists say, they've done so as part of a tradition of civil disobedience that stretches to the nation's colonial roots.

"All of the social progress we've made has depended, over the entire history of this nation, from the very beginning, on that ability to speak out against things that are wrong, things that are legal but should not be," said Carroll Muffett, president of the Center for International Environmental Law. "This country, for all its failing, has long respected the importance of that. These bills put that fundamental element of our democracy in

In an Age of Terrorism

The modern environmental movement sprung out of mass protest, when millions took to the streets for the first Earth Day in 1970. In the decade that followed, civil disobedience emerged as a core tactic as greens joined with anti-war protesters to launch anti-nuclear campaigns.

The movement returned to those roots with its fight to stop the **Keystone XL** oil pipeline. Beginning in 2011, activists staged sit-ins ending in arrests that galvanized the movement and drew national attention to what had been the mundane work of building pipelines.

Across the country, people began physically obstructing fossil fuel infrastructure. Protesters **blocked train tracks** carrying coal and oil in Washington state, halted trucks at the **gates of a gas storage facility** in upstate New York and **kayaked in front of an oil rig** in Seattle. This was before hundreds were arrested at Standing Rock.

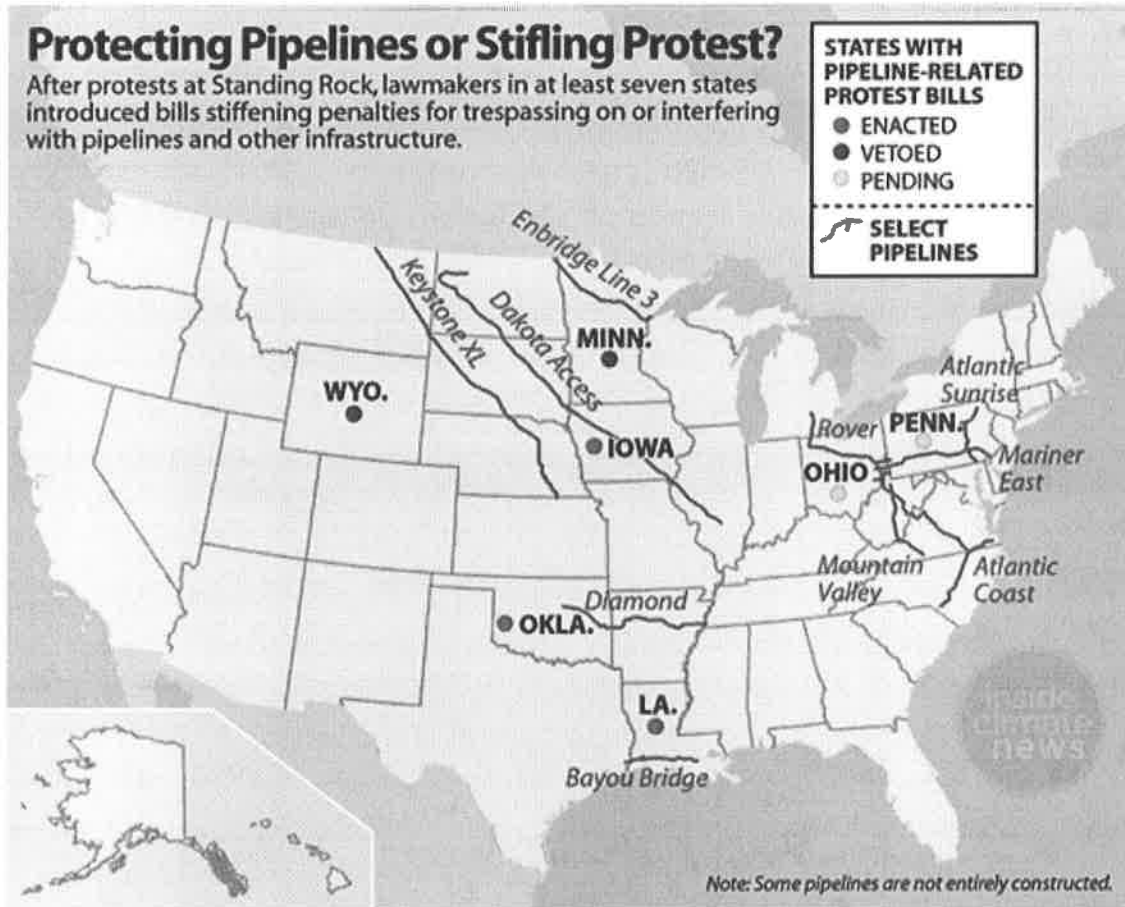
In the absence of a clear federal energy plan, fossil fuel projects effectively became the policy, locking in oil, gas and coal infrastructure—and their greenhouse gas emissions—for generations. They became the focus of environmental groups, who found common cause with tribes and landowners fighting to protect their land and water. The groups launched campaigns that delayed or blocked several major coal export facilities, pipelines and other projects, costing energy companies millions or even billions of dollars.

To push back, the industry turned to its supporters in government.

Soon after Oklahoma's critical infrastructure bill passed last year, the conservative American Legislative Exchange Council (ALEC) used it to **write model legislation** for other states.

In at least six more states, lawmakers introduced similar bills

that would impose steep penalties for trespassing on, or tampering with, pipeline property and other infrastructure. Two were enacted this year. Two others are pending.



In Wyoming, one bill **was openly proposed** on behalf of energy companies. In other states the ties are barely hidden.

Louisiana state Rep. Major Thibaut, a Democrat, introduced a bill that followed ALEC's model by adding pipelines to a list of critical infrastructure facilities. When he presented it to a Senate committee in April, he brought Tyler Gray, a lobbyist for the Louisiana Mid-Continent Oil and Gas Association. During the hearing, **Gray answered** most of the questions. At one point, he leaned over to Thibaut to recommend that he accept an amendment. Neither Thibaut nor Gray responded to requests for comment.

Gov. John Bel Edwards signed it into law in May, after an amendment removed the threat of conspiracy charges.

Iowa enacted a law that makes "critical infrastructure sabotage" a felony. Lawmakers in Wyoming and Minnesota also approved critical infrastructure bills this year, but the governors there vetoed the legislation. Similar bills are pending in Ohio and Pennsylvania.

The bills may get their first test soon in Louisiana after the arrests of the three activists on the bayou. Activists had been conducting tree-sits and other actions for weeks and were careful to stay off the pipeline easements once the new law took effect, said Cherri Foytlin, an activist organizer in the state. The three who were taken from their boats, for example, claim to have been in navigable waters, which are supposed to be public. The definition of what's navigable has been the subject of **much debate and legal wrangling** in the state, however, and the off-duty officers **pulled the activists off their boats** to arrest them.

"It was really scary," said Cindy Spoon, one of the activists, in a video **posted to Facebook**. "They grabbed my wrist, grabbed my waist and they started to pull one of my arms behind my back and put me in a stress position."

The local district attorney has not yet formally filed charges. If the case proceeds, the activists will challenge the law itself, said William Quigley, a professor at Loyola University College of Law in New Orleans who is representing them pro bono. They could face up to five years in prison if convicted.

Two more incidents occurred over the weekend involving activists who had erected a stand high in the trees to block construction. Quigley said the group had permission from property owners to be on the land. But deputies with the St. Martin Parish Sheriff's Office arrested six people, including a journalist. The property is co-owned by hundreds of parties, and some of them have not signed easement agreements with Energy Transfer Partners, the primary owner of the pipeline.

The St. Martin Parish Sheriff's Office did not return requests for comment on the weekend arrests.

"I think this shows how ridiculous this law is if this is the way it's going to be applied," Quigley said.

The legislation is not without precedent. Since 1990, nearly a dozen states **have passed bills** known as "ag-gag" laws that prohibit surreptitiously recording inside feedlots and breeding facilities. Many came after exposés of horrific conditions and animal abuse. Three of those laws were subsequently overturned by courts.

But environmentalists and free speech advocates say the new bills are part of a broader effort to recast environmental activists as criminals, even terrorists.

For example:

- In May 2017, the American Fuel and Petrochemical Manufacturers **published a blog post** about activists who vandalized pipelines, under the headline: "Pipelines Are Critical Infrastructure—and Attacking Them Is Terrorism."
- Last year, Energy Transfer Partners **filed a federal lawsuit against Greenpeace** and other groups seeking hundreds of millions of dollars. The complaint accuses some of the nation's leading environmental organizations of operating an "eco-terrorist" conspiracy at Standing Rock. (A judge dismissed the case against one of the defendants last month, but has yet to rule on a motion to dismiss the case against Greenpeace.)
- Another industry group **launched a database** to track "criminal acts on critical energy infrastructure," claiming eco-terrorism incidents were on the rise.
- In Congress, 84 members **wrote a letter** to Attorney General Jeff Sessions asking if protestors who tamper with pipelines could be prosecuted as domestic terrorists. Sponsors of the state pipeline bills **have also invoked terrorism.**

Supporters of the bills say they do not suppress lawful protests.

"There's a legal process to stop something," said Oklahoma state Rep. Mark McBride, who sponsored another bill that assigns civil liability to anyone who pays protesters to trespass. "But if you're chaining yourself to a bulldozer or you're standing in the way of a piece of equipment digging a ditch or whatever it might be, yes, you're causing harm to the project and to the person that's contracted to do that job."

Advocacy groups say the bills are unnecessary—trespassing and vandalism are already unlawful, and protesters who have disrupted operations have largely been charged under existing statutes. They fear the legislation uses a handful of dangerous incidents as a pretext to intimidate mainstream advocates and target more widespread acts of peaceful civil disobedience, like temporarily blocking access to a construction site. Several environmental and civil liberties organizations are now in talks about how to respond to the industry's actions.

"The clear attempt there is to bring environmental justice, environmental advocacy organizations into a realm of criminal liability," said Pamela Spees, a senior staff attorney at the Center for Constitutional Rights, which represents activists in Louisiana. "They're basically trying to silence and minimize the impact of environmental organizations."

Afraid to Speak Up at the Pipeline Crossroads of the World

Ever since the state's first gusher began spurting crude in 1897, oil has dominated life in Oklahoma. Today, it is home to fracking pioneers, including Continental Resources. The town of Cushing, the self-dubbed "pipeline crossroads of the world," is a critical oil trading hub. "Environmental activist" is not a badge many wear openly in Oklahoma.

Dakota Raynes spent the past few years at Oklahoma State University writing his dissertation about how people have

responded to a fracking boom that's literally shaken the state. As drillers began injecting more wastewater into wells from 2010-2015, the number of earthquakes jumped more than 20-fold to 888.

Raynes interviewed dozens of activists, lawmakers, regulators and ordinary citizens. He found that almost everyone is reluctant to speak publicly against the industry. They fear neighbors or colleagues or parents of their children's friends will catch wind and shun them. Raynes said he's attended events with activists who have returned to their cars afterward to find screws driven into tires.

"Many people read Oklahoma as a hostile context in which to engage in any kind of pro-environmental work," he said. "And they all link that back to the phenomenal amount of power that the oil and gas industry has, both as a cultural force, as a legal force, as a political force."

Standing Rock changed that deference, said Mekasi Camp Horinek, a member of the state's Ponca tribe.



Thousands of protesters from across the country traveled to the Standing Rock Sioux Tribe's reservation in North Dakota to speak out against construction of the Dakota Access pipeline in 2016 and 2017. Police set up armed blockades and at one point turned water cannons on protesters in sub-freezing weather. Credit: Robyn Beck/AFP/Getty Images

Horinek grew up on tribal land near an oil refinery and a factory that produces carbon black, a sooty petroleum product. He blames the facilities for contributing to disease and deaths in his community. When the call came to join the resistance at Standing Rock, he became a leading organizer. (The Ponca's ancestral land in Nebraska lies in the path of the Keystone XL pipeline, another project he's fought.)

"I think the state of Oklahoma felt threatened and was worried that people would rise up," he said about the critical infrastructure bill. "And they should be."

Horinek says he remains undaunted, but he said the new law had an immediate effect on others.

People were suddenly threatened with long prison terms if they crossed onto pipeline property. "That definitely weighs heavy on a person's thoughts," he said.

Oklahoma has 39 American Indian tribes, most forced to move there during the Trail of Tears in the 19th Century, and indigenous activists led the fight against the Diamond Pipeline. "They can't risk a six-month sentence for trespassing. Who's going to take care of their kids, their parents, their grandparents?" he said.

Biggs, the state representative who sponsored the bill, now works for the federal Department of Agriculture. He declined to comment for this article. The Oklahoma Oil and Gas Association also declined to make anyone available for an interview.

Activists say the bill was a clear assault.

Clamping Down on Speaking Out

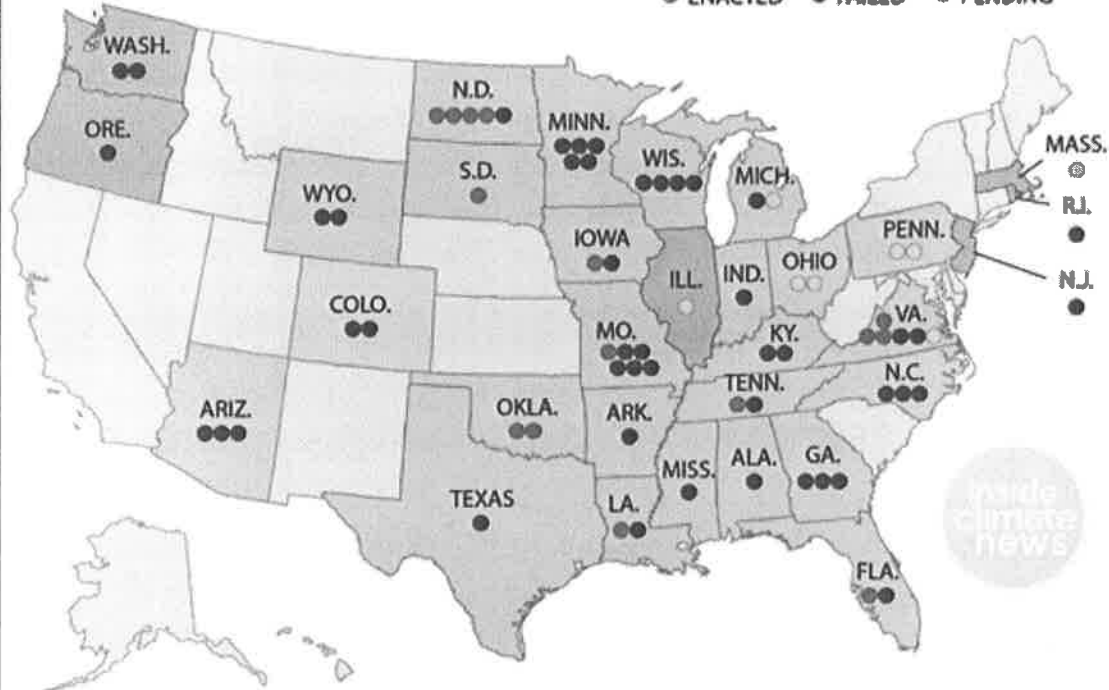
Lawmakers in at least 31 states have proposed measures since President Trump's election that would limit a broad array of protests by expanding the definition of rioting and terrorism, increasing penalties for blocking traffic and more. Bill tracking by the International Center for Not-for-Profit Law shows that most of the measures have failed.

PARTY CONTROL OF STATE LEGISLATURE

■ DEMOCRAT ■ REPUBLICAN ■ SPLIT

BILLS OR EXECUTIVE ORDERS

● ENACTED ● FAILED ○ PENDING



NOTE: Arizona and Georgia include bills as "failed" that passed after the most restrictive provisions were removed.
SOURCES: International Center for Not-for-Profit Law; National Conference of State Legislatures; InsideClimate News research

PAUL HORN / InsideClimate News

The Sierra Club has a policy against engaging in civil disobedience. But the bill's conspiracy element—which says a group can be charged with 10 times the fines given to a person who violates the provisions—worries the organization's Oklahoma director, Johnson Grimm-Bridgwater. He was among those who spoke at the 2017 press conference. While Grimm-Bridgwater says participating in a press conference should qualify as constitutionally protected speech, there's no telling how a prosecutor might apply the new statute.

"The law is punitive and is designed to create friction and divisions among groups who normally wouldn't have a second thought at working together," he said.

Brady Henderson, legal director for the Oklahoma chapter of

the American Civil Liberties Union, said there's widespread concern in both liberal and libertarian circles about the law, and he's fielded questions from several nonprofits about the conspiracy clause.

The ACLU in Oklahoma is considering legal challenges, but may have to wait until a district attorney tries to use the new law. Still, Henderson said, the language is so broad that it can apply to almost anything.

"By equating those kinds of things together, essentially political speech on one end and on the other end outright terrorism," he said, "the bill is a pretty gross instrument."

Protesters Under Surveillance

As activists were fighting the Diamond Pipeline in Oklahoma, Energy Transfer Partners was planning another oil pipeline at the southern end of its network.

The Bayou Bridge pipeline is slated to run from Texas to St. James Parish, Louisiana, already home to many petrochemical facilities. Along the way, it crosses through the Atchafalaya Basin, the nation's largest river swamp and a center of the state's crawfish industry.

Environmentalists were alarmed by the risks the project posed to residents of St. James Parish and the swamp's fragile ecosystem. And they quickly felt as if law enforcement agencies were working against them. For one thing, some officials openly supported the project. Joseph Lopinto, now Jefferson Parish sheriff, **spoke at a hearing** last year on behalf of the National Sheriffs' Association and urged regulators to approve the pipeline.

Anne Rolfes, an organizer of the pipeline resistance and founder of the advocacy group Louisiana Bucket Brigade, said activists also suspected they were being watched.

During the protests at Standing Rock, a private security company hired by Energy Transfer Partners had **compiled**

widespread ~~secret~~ **daily intelligence briefings** and coordinated with local law enforcement, as detailed in reports by The Intercept.

Rolfes' group this year also obtained a handful of documents through a public records request that indicate state officials were tracking their efforts.

One **state police report from November** said the agency sent an investigator from its criminal intelligence unit to a hearing where activists had allegedly planned a protest, and that a local sheriff's office planned to send a plainclothes officer. Rolfes said no protest was planned; activists merely intended to speak at a public hearing.

In the following months, an intelligence officer with the Governor's Office of Homeland Security and Emergency Preparedness sent two emails to colleagues describing environmental groups' priorities, quoting Rolfes' newsletter **and an article** about the groups and **adding a photograph** of her.

Louisiana State Police declined to comment. Mike Steele, a spokesman for the state Homeland Security Department, rejected the notion that his agency spies on activists. He said this type of open-source tracking was similar to what they conduct ahead of football games or festivals. "We do that with any type of event, because safety is the number one concern," he said.

Energy Transfer Partners spokeswoman Alexis Daniel issued a statement saying, "any claims that our company or our security contractors have inappropriately monitored protestors in false." It's unclear what surveillance, if any, the company or its contractors have deployed in Louisiana. Energy Transfer Partners has also been **accused of spying** by a family in Pennsylvania.



Anne Rolfes, founder of the advocacy group Louisiana Bucket Brigade, speaks at a protest in 2017. A similar photo of her was circulated by a law enforcement agency. Credit: Julie Dermansky

Rolfes said Louisiana officials are treating activists like criminals. "We're going to be followed while we participate in the democratic process?" she said.

The arrests in August of the three protesters on boats who were detained by off-duty officers only deepened the activists' feelings that the state and energy industry were working against them. While the arresting officers were working as contractors, they wore their state uniforms and badges and carried weapons.

Spees, with the Center for Constitutional Rights, said the incident represented a problematic melding of public and private authorities. After the industry-supported bill was enacted by the state, she said, state employees acted on behalf of an energy company to detain activists under the new law.

"It's as though they've become the hired hands for private oil companies and pipelines companies," she said.

Activists in Virginia, where two gas pipelines are drawing protests, have also been tracked by that state's Fusion Center—which shares information across agencies to combat terrorism and crime—according to a report by the *Richmond Times-Dispatch*.

In Washington state, a local sheriff's office has monitored activists opposed to a major pipeline project that connects with Canada's tar sands, sharing information with that state's Fusion Center, **documents obtained** by The Intercept show. Protest groups there already tried to block tanker traffic associated with the project, and local authorities have conducted trainings to prepare for mass protests.

The nation's intelligence community has a dark history of tracking political movements, including the FBI's COINTELPRO, which snooped on Martin Luther King, Jr., and others. Earlier this decade, FBI agents **monitored opponents of the Keystone XL pipeline**, according to *The Guardian*, and the bureau **had at least one informant** at Standing Rock.

Even if local law enforcement agencies today are doing little more than collecting news articles and other open source information, covert surveillance risks equating political protest with criminal activity, said Keith Mako Woodhouse, a historian at Northwestern University who wrote a book about radical environmentalists.

"It gives a sense that law enforcement is, if not on the side of, at least more sympathetic to the industries and practices that are being protested," he said. "Presumably they're not surveilling the energy companies."

Pipeline companies have cultivated that relationship. They have reimbursed state law enforcement millions of dollars for providing security for their projects in **North Dakota**, Iowa and **Massachusetts**, for example. Most major pipeline companies also run charitable campaigns that have

contributed millions of dollars to local emergency responders and other agencies and groups along their routes. The National Sheriff's Association, in turn, supported the Bayou Bridge and Dakota Access pipelines while it called protesters "terrorists."

A Worrying Trend

Over the past decade, the sense of urgency around climate change has intensified. Scientists say there is little time before the planet is committed to potentially devastating warming. The only practical way to avoid that is to largely eliminate fossil fuel use over the next several decades.

The government's response has been minimal, "so the next step is civil disobedience," said Woodhouse, the historian. "And if anything, it's surprising that it hasn't happened sooner and at a greater scale."

Woodhouse said efforts to suppress environmental protest trace back to the rise of radical environmental groups in the 1980s and '90s, when public officials slapped names like "eco-terrorism" and "ecological terrorism" on activists who vandalized equipment or animal testing facilities.

Now, Woodhouse said, environmentalists are threatening one of the country's most powerful industries. Some advocates say the new push against activists seems more widespread and unabashed.

"I think there is a very worrying trend—and the trend is on both sides of the political aisle to be perfectly frank and candid—a trend of trying to suppress political speech that you don't agree with," said David Snyder, executive director of the First Amendment Coalition.

"I think a lot of people feel a lot more threatened than they have in a long time," he said, "and I think that's true on all sides of the political spectrum. And when people feel threatened, they tend to lash out."

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