

DOLLARS VS. DEMOCRACY

Inside the Fossil Fuel
Industry's Playbook
to Suppress Protest
and Dissent in the
United States

2023



GREENPEACE

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Greenpeace is an independent campaigning organization that uses peaceful protest and creative communication to expose global environmental problems and to promote solutions that are essential to a green and peaceful future.

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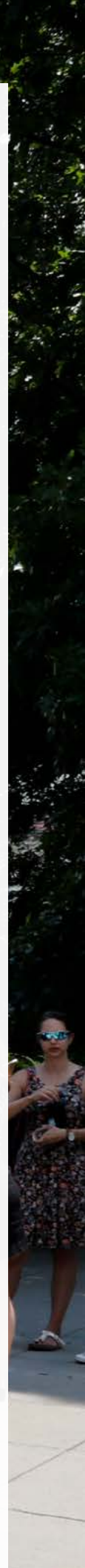
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U.S. Department Land For Sale, July 18, 2017.

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FIRE DRILL
FRIDAYS

NO NEW FOSSIL FUELS

NO NEW FOSSIL FUELS

GREEN NEW



NO NEW FOSSIL

Sixth Fire Drill Friday in Washington DC, November 15, 2019.

EXECUTIVE SUMMARY

As we collectively fight for our lives amid climate chaos, the fossil fuel industry is behind an intensified effort to steamroll overwhelming public support for U.S. climate action. The industry's new playbook expands significantly upon years of spreading climate change denial and disinformation. Indeed it represents an even more dangerous threat: a threat to First Amendment-protected free speech, which is urgently needed to forestall the devastating consequences of climate inaction.

Since the Dakota Access Pipeline (DAPL) protests at Standing Rock in 2016, the fossil fuel industry has increasingly contributed to a pattern of escalation whereby activists—and nonactivists exercising their right to dissent—are painted as violent extremists who must be subdued. The industry's playbook to suppress protest and dissent includes various forms of intimidation and deterrence, sophisticated public relations efforts to turn public opinion against protesters, and enforcement actions intended to

pressure protesters into submission. In many cases, the fossil fuel industry has worked in lockstep with government allies: officials who may share in the industry's ideology, but who have also benefited from its election spending, lobbying, targeted payments, and shared financial interests, or have passed through the “revolving door” from industry to government or vice versa.

This report profiles the industry response to opposition to five major fossil fuel projects ranging from 2014 to the present. The examples reveal widespread public-private coordination to monitor activism, physical and legal aggression toward protesters, extensive corporate lobbying for anti-protest bills that criminalize civil disobedience, and more. But they also reveal a mixed success record for the industry: some states have staved off anti-protest legislation and, across the country, activists and concerned citizens have continued to fight for justice and environmental protection despite the powerful forces opposing them.



*Enbridge's Line 3 Expansion in Canada,
September 28, 2017*

KEY FINDINGS

The fossil fuel industry holds close relationships with government officials and law enforcement. Collectively, they have succeeded in many efforts that shrink civic space and heighten the consequences for engaging in peaceful protest.

- Since 2016, **broad fossil fuel anti-protest laws have been enacted in 18 states, barricading roughly 60% of domestic oil & gas production and local infrastructure from peaceful protest that could impede the industry's continued growth.** These laws typically create extreme and unnecessary penalties—which can include years-long imprisonment and harsh fines—for protest-related infractions such as trespass, despite the pre-existence of laws in every state that address such infractions. Another four states have enacted narrowed versions of the same law posing less explicit threats to peaceful protest, but which could still be exploited by prosecutors seeking to issue trumped up charges against peaceful protesters.
- The close-knit relationship between fossil fuel companies and law enforcement can involve extensive intelligence sharing, often without regard for First Amendment-protected activity; joint planning; hiring off-duty police for private security; and financial support in the form of donations and reimbursements paid by the company. **The nature of these relationships opens the door to potential abuses of law enforcement authority and raises the possibility that law enforcement are serving private interests above the public.**
 - + The fusion center network, in particular—a web of state and federal agencies that was created to coordinate counter-terrorism intelligence, but quickly expanded to monitoring First Amendment-protected activity of nearly any kind—has facilitated surveillance and information-sharing with fossil fuel companies and their security contractors.
- **Law enforcement authorities, sometimes working side-by-side with private security paid for by fossil fuel companies, have used hostile tactics to quell pipeline protests** including:
 - + Water cannons and rubber bullets against water protectors resisting the construction of DAPL (Morton County Sheriff's Office);
 - + Buffer zones that prevented food from being delivered to protesters engaged in tree-sits along the Mountain Valley Pipeline (MVP) route (U.S. Forest Service);
 - + Pain compliance torture against water protectors engaged in equipment lockdowns blocking Line 3 construction (Hubbard County Sheriff's Office).
- The **fossil fuel industry has utilized public relations techniques and faux grassroots groups to turn public opinion against water protectors and activists, often depicting them as violent extremists, terrorists, or out-of-line troublemakers.** Law enforcement authorities have used similar rhetoric in public statements and internal communications, providing cover for their hostility toward protesters.
- **Eminent domain laws strongly favor the fossil fuel industry** and have been used to force landowners to surrender their property rights, cede property access without consent, and arrest protesters on private land—in some cases including the landowners themselves.

The fossil fuel industry has lobbied extensively for anti-protest legislation and donated to many of its sponsors.

- Since 2017, **nine of the top ten companies that have lobbied the most for fossil fuel anti-protest bills are midstream or integrated oil and gas companies.**

1. Marathon Petroleum Corp
2. ExxonMobil
3. Enbridge
4. TC Energy (TransCanada)
5. Koch Industries / Flint Hills
6. Chevron
7. Energy Transfer
8. Williams Companies
9. AT&T
10. Valero

- **25 fossil fuel and energy companies have contributed more than \$5 million to state anti-protest bill sponsors since 2017.** The top five are listed below, counting donations to anti-protest bill sponsors in the bill introduction year or preceding year, only.

1. Duke Energy	\$538,750
2. Dominion Energy	\$383,850
3. Marathon Petroleum	\$324,265
4. BNSF Railway Co.	\$260,730
5. Koch Industries	\$245,950

This analysis covers all state anti-protest bills tracked by the International Center for Not-for-profit Law (ICNL). In addition to fossil fuel anti-protest bills, this analysis includes bills that eliminate driver liability for hitting protesters, create felony offenses for demonstrations construed as “riots” and more.

Source: FollowTheMoney / OpenSecrets.org

The fossil fuel industry uses strategic lawsuits against public participation (SLAPPs) to intimidate and chill dissent. There is a high crossover of fossil fuel companies that have used SLAPPs with those that have lobbied for anti-protest laws.

- Out of **116 SLAPP and judicial harassment claims since 2010, 86 were filed by companies that have lobbied for anti-protest laws** including: ExxonMobil, Murray Energy Corporation, Energy Transfer, Chevron, and TransCanada.
- Another **15 of the 116 claims were filed by companies whose trade groups have lobbied for anti-protest laws or whose hired lobbyists** have done so on behalf of other clients.

2023 has been marked by the broadening use of aggressive prosecutorial and civil litigation claims against protesters, violent policing against “Stop Cop City” protesters in Georgia, and the continuing spread of anti-protest laws.

- **Atlanta law enforcement and the Georgia Bureau of Investigation have responded to protests opposing the construction of the Atlanta Public Safety Training Center with heavy-handed tactics and sweeping arrests.** During a January 2023 raid of campgrounds occupied by activists, police fatally shot Manuel Esteban Paez Terán 57 times. In September 2023, state Attorney General Chris Carr indicted more than 60 individuals—including organizers from the Atlanta Solidarity Fund—on RICO charges that dangerously, and absurdly, mischaracterize anyone who showed opposition to Cop City as part of a criminal enterprise.
- In September 2023, **MVP took direct aim at its critics through a civil lawsuit that seeks to constrain more than 41 individuals and two organizations from activities that are alleged to have slowed construction**, including through fundraising, as well as seeking more than \$4 million in damages.
- **North Carolina and Georgia have enacted fossil fuel anti-protest laws that carry draconian penalties for vague offenses that prosecutors could use against peaceful protesters.** In North Carolina, impeding an energy facility could now be punished with up to 19 years in prison and \$250,000 in fines. Another new law, which was initially sought by North Carolina Republicans after the 2020 Black Lives Matter protests, enacts heightened penalties for activities defined as “rioting.” In Georgia, interfering by “force [...] with the proper operation of any critical infrastructure” could now be punished with between two and 20 years in prison.
- **Mississippi has enacted new laws that undermine local governance and threaten free speech in the majority-Black city of Jackson**, after decades of neglected infrastructure left thousands without water for a month. One of the laws prohibits Jackson residents from engaging in peaceful protests near government buildings without express permission from state officials.

The following policies are necessary to reverse the deterioration of civic space and advance the movement for a healthy, socially just, and fossil-free future.

- **Challenge and repeal anti-protest laws; pass anti-SLAPP protection laws on the state and federal level; and pass local, state, and federal resolutions affirming all Americans' right to protest**, free from threats of invasive surveillance, and physical and legal aggression.
- **Reaffirm Indigenous sovereignty and provide redress for human rights violations**, as outlined in the UN Declaration on the Rights of Indigenous Peoples.

- **Pass the Climate Equity Act and the Environmental Justice for All Act, and phase out fossil fuel production** through steps that include: banning new fossil fuel leasing and permitting on public lands and waters; strengthening “polluter pays” requirements to ensure fossil fuel corporations pay the full cost of remediation; and establishing public health and safety buffer zones to prohibit oil and gas production near where people live, work, play, and learn.
- **End the use of sweeping intelligence-gathering practices that target activism and dissent under the cover of domestic terrorism prevention**; prohibit law enforcement authorities from participating in arrangements that open the door to conflicts of interest; and pass state and federal laws banning the use of injury-prone tactics against peaceful protesters.

Case Studies at a Glance

Dakota Access Pipeline

In 2016, demonstrations against DAPL at Standing Rock brought conversations about Indigenous sovereignty, water rights, and the dangers of oil and gas pipelines to kitchen tables across the globe. As public awareness about the #NoDAPL movement grew, so too did the fossil fuel industry opposition strategy. Energy Transfer Partners (ETP), the controlling owner of DAPL, began pumping money into private security that forged a close working relationship with North Dakota local law enforcement—uniting forces to quell public dissent with militarized equipment and tactics. State and federal law enforcement also contributed to this oppressive response. At the same time, ETP and their political allies ramped up retaliatory efforts to prevent the contagious power of the Standing Rock demonstrations from spreading, including pushing for boosted penalties to criminalize protest, flooding the media with anti-protest rhetoric, and filing baseless SLAPP suits to chill dissent.

Diamond Pipeline

The Diamond Pipeline, announced in 2014, was a 440-mile project that would carry crude oil from Oklahoma’s Cushing Terminal to Valero’s Memphis Refinery. Resistance to the pipeline swelled in early 2017, inspired by the movement at Standing Rock. As well as expressing environmental concerns, Indigenous activists and their allies were deeply disturbed that the pipeline route would intersect the Trail of Tears. The fossil fuel industry and government officials struck back against the movement, however, with stigmatizing rhetoric, which opened the door for increasingly harsh state repression. A state and federal law enforcement-backed report, which was distributed to local police and reproduced by the media, warned that “environmental rights extremists” posed a terrorist threat to the project. At the urging of Oklahoma’s oil and gas lobby and Valero, Oklahoma Gov. Mary Fallin enacted two anti-protest laws with first-of-their-kind, strategic provisions targeting protests near fossil fuel facilities, foretelling a drop-off in opposition to the Diamond Pipeline project. These laws were the blueprint for a “model bill” adopted by the corporate-funded American Legislative Exchange Council, which would aid the spread of similar laws around the country.

Atlantic Coast Pipeline and Mountain Valley Pipeline

The fossil fuel industry had only mixed success at quashing years-long grassroots opposition to the Atlantic Coast Pipeline (ACP) and MVP. The Appalachian fracked gas pipeline projects, both announced in 2014, were repeatedly stalled by eminent domain disputes, successful legal challenges, and protests. Dominion and EQT Corporation, the pipelines' controlling owners, coordinated extensively with fusion center officials in Virginia and North Carolina, and worked side-by-side with local law enforcement along the pipeline route. Starting in 2018, Virginia and West Virginia used escalating fines, arrests, and subjective buffer zones to deter civil disobedience, but many protesters adapted or endured in the face of these pressures. ACP was canceled in 2020, but MVP construction resumed in July 2023 nearly four years after a court-ordered construction stoppage. Since 2020, anti-protest laws have been enacted in West Virginia and North Carolina, and MVP protesters have been sued by the company, and threats to protest and dissent have been compounded by an anti-environmental backlash stoked by the fossil fuel industry.

Line 3 Pipeline

In 2014, Enbridge proposed replacing and expanding its Line 3 crude oil pipeline, a project that would require constructing a new pipeline route across treaty territories where the Anishinaabe (Ojibwe) peoples are granted certain land access rights. Between 2017 and 2021, a large and diversified movement opposing the pipeline grew out of Indigenous resistance and climate activism. In an effort to avoid the political mistakes made at Standing Rock, the state and Enbridge claimed they respected protesters' rights. Yet they quietly took steps to stifle resistance. Enbridge funded faux grassroots groups to shift public opinion and reimbursed police and other agencies in Minnesota for more than \$8.6 million, mainly in protest-related expenses, through a state-managed escrow account. Law enforcement authorities participated in training sessions and meetings with Enbridge employees, and used increasingly forceful tactics against water protectors between June and August 2021. Pipeline construction was completed in September 2021, but repeated efforts to pass anti-protest legislation failed. In 2023, in a powerful defense of protest, a district court judge dismissed all protest-related charges against three Indigenous women leaders, writing in her decision, "to criminalize their behavior would be the crime."



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Crews work to clean up at the Rainbow Pipeline oil spill in Alberta, Canada, May 5, 2011. The Rainbow Pipeline was owned by a subsidiary of Plains All American L.P., a Texas-based company that also operates and partially owns the Diamond Pipeline.

INTRODUCTION

Dollars vs. Democracy 2023 is a deep-dive into the fossil fuel industry's attacks on peaceful protest and dissent. In addition to updating key analyses from *Dollars vs. Democracy 2021*, this report profiles the industry's response to opposition to five major fossil fuel projects ranging from 2014 to the present. These case studies reveal how fossil fuel companies are using protest and dissent-stifling tactics to fight all efforts to phase out fossil fuels, in pursuit of record profits, while global temperatures rise.

The right to protest is constitutionally protected and has been a hallmark of our democracy since the founding of this nation. Yet, free speech in all its forms has been increasingly at risk as a result of the backlash against social movements organizing for justice and environmental protection. Indigenous-led movements to defend land and water from polluting infrastructure and the Black Lives Matter movement, in particular, have been targeted by polluting corporations, special interests, and government officials. And the

extreme measures they are willing to take to see activists defeated are well documented. The corporate and political powers threatening democracy are now drawing from an expansive set of tactics to stifle protest and dissent, including various forms of intimidation and deterrence, sophisticated public relations efforts to turn public opinion against demonstrators, civil suits for monetary damages, and law enforcement actions intended to pressure demonstrators into submission.

Anti-Protest Legislation Since 2017

Anti-protest legislation has been a primary and particularly dangerous tactic. According to the International Center for Not-for-Profit Law (ICNL), more than 250 anti-protest bills have been introduced in 45 states since 2017.¹ Among them: bills that eliminate driver liability for hitting protesters, create felony offenses for demonstrations construed as “riots,” and more. These bills are designed to selectively repress political participation, especially from racial justice and environmental movements. They are formulated in such a way that they can restrict protected First Amendment speech, including but not limited to peaceful protest.

The fossil fuel industry has played a key role in the creation and spread of fossil fuel anti-protest laws with provisions specifically intended to stifle protest near fossil fuel facilities. (The industry calls these “critical infrastructure” laws—a term that diverts attention from the use of these laws in stifling protest that opposes fossil fuel expansion.) Among other provisions, these

laws typically create draconian penalties for protest-motivated trespass, despite the pre-existence of laws in every state that address trespass regardless of motive. The industry's push for anti-protest laws has involved direct lobbying, trade group lobbying, and using the American Legislative Exchange Council (ALEC), a powerful corporate-funded group with direct access to state legislators, to craft and promote “model legislation” that can be replicated and introduced in statehouses across the country. Since the Dakota Access Pipeline (DAPL) protests at Standing Rock in 2016, broad fossil fuel anti-protest laws have been enacted in 18 states, barricading roughly 60% of domestic oil & gas production and local infrastructure from peaceful protest that could impede the industry's continued growth.² Another four states have enacted narrowed versions of the same law posing less explicit threats to peaceful protest, but which could still be exploited by prosecutors seeking to issue trumped up charges against peaceful protesters.³



© George Nikitin / Greenpeace

Free Speech Resolute Forest Hearing in San Francisco, October 10, 2017.

For the past six years, Greenpeace USA has monitored the fossil fuel industry’s involvement in the push for fossil fuel anti-protest laws. *Dollars vs. Democracy 2021* included the most comprehensive ranking of corporate lobbying for these bills to date based on financial disclosures, news reports, and legislative committee records.⁴ This ranking has been updated below, covering the timeframe from 2017 through 2023.⁵

1. Marathon Petroleum Corp
2. ExxonMobil
3. Enbridge / Spectra / Alliance Pipeline ↑
4. TC Energy (TransCanada) ↑
5. Koch Industries / Flint Hills ↓
6. Chevron ↑
7. Energy Transfer ↑
8. Williams Companies ↑
9. AT&T ↑
10. Valero ↓

Arrows show change in ranking since *Dollars vs. Democracy 2021*

Many sectors of the fossil fuel industry have lobbied for fossil fuel anti-protest bills, but companies in the oil refining and oil and gas pipeline sectors have been among the most active proponents of this trend. Nine

of the top ten companies that have lobbied the most for fossil fuel anti-protest bills have pipeline and/or refining business activities, and seven operate near-exclusively in the refining and/or pipeline business. According to Bloomberg, Marathon Petroleum and the American Fuel and Petrochemical Manufacturers (AFPM) spearheaded efforts to get ALEC to adopt its model fossil fuel anti-protest bill in 2017.⁶ An AFPM lobbyist was also revealed to be “intimately involved” with crafting the bill through leaked audio from a 2019 energy conference in Washington DC.⁷

In addition to the industry’s extensive lobbying, 25 fossil fuel and energy companies have donated a combined total of \$5 million to anti-protest bill sponsors covering the entire spectrum of legislation tracked by ICNL.⁸

1. Duke Energy	\$538,750
2. Dominion Energy	\$383,850
3. Marathon Petroleum	\$324,265
4. BNSF Railway Co.	\$260,730
5. Koch Industries	\$245,950

Donations are only counted to anti-protest bill sponsors in the bill introduction year or preceding year.
Source: FollowTheMoney / OpenSecrets.org

The Fossil Fuel Industry's Direct Assault on Democracy

Over the course of years, the fossil fuel industry has systematically expanded its arsenal aimed at suppressing protest and dissent. One key tactic: abusive civil suits called “strategic lawsuits against public participation” - better known as “SLAPPs.” The industry also employs hostile policing and security, stigmatizes protest, manufactures anti-environmental backlash, exploits divisive rhetoric, and more. Such tactics are cumulative, mutually reinforcing, and at times overlapping.

It is critical to note that none of these corporate attacks on democracy would be possible without allies in government: public officials who often share in the fossil fuel industry's ideology, but who have also benefited from its election spending, lobbying, targeted payments, and shared financial interests, or have passed through the “revolving door” from industry to government or vice versa. The fossil fuel industry holds close—and deeply reciprocal—relationships with government officials empowered to pass laws restricting opponents' rights and vested with authority to approve or reject new fossil fuel

projects. This has been especially dangerous in states with Republican-controlled legislatures, which account for 21 of the 22 states that have passed fossil fuel anti-protest laws.⁹ Yet, the industry also has substantial power in Democratic-controlled states. Moreover, the industry has collaborated extensively with law enforcement entities in the countrywide “fusion center” network, a cross-jurisdictional government program supported by the Department of Homeland Security (DHS) that was originally developed to coordinate and share intelligence related to terrorism, but quickly expanded to monitoring First Amendment-protected activity of nearly any kind.¹⁰ The fusion center network has been widely condemned by organizations including the American Civil Liberties Union (ACLU) and the Brennan Center for targeting minority communities and protest movements, and for its poor oversight and collaboration with the military and the private sector.¹¹ Reports by fusion centers sometimes all but erase the distinction between peaceful civil disobedience and violent extremism.



Thousands Rally in Support of Native Nation in Washington D.C., March 10, 2017.

© Amanda J. Mason / Greenpeace



Dakota Access Pipeline Day of Action in Los Angeles, November 11, 2016.

A Desperate Attempt to Keep Polluting

As climate action movements grow and scientists issue calls to halve carbon dioxide (CO₂) emissions by 2030, the fossil fuel industry has sought to expand oil and gas production.¹² According to the Guardian, short-term industry plans include “oil and gas projects that will produce greenhouse gasses equivalent to a decade of CO₂ emissions from China, the world’s biggest polluter.”¹³ These plans include 195 projects that would result in at least a billion tons of CO₂ emissions over their estimated lifetimes—and 60% of these carbon bombs are already pumping. The top 12 biggest oil companies are expected to spend \$103 million per day to exploit new oil and gas through the rest of the decade.¹⁴

While these fossil fuel projects exacerbate the climate crisis globally, they also pointedly threaten Black, Brown, and Indigenous communities.¹⁵ The fossil fuel economy is dependent on sites of concentrated harm, or “sacrifice zones,” whose inhabitants are subject to elevated health risks.¹⁶ Fossil fuel transport routes are frequently mapped along Indigenous communities and

tribal lands, endangering water supplies, and sacred sites. Beyond environmental concerns, oil projects often entail the influx of hundreds of workers forming “man camps” near Indigenous communities, which have led to increased incidents of violence, sex trafficking, and illicit drug trade.¹⁷

Throughout history, communities impacted by corporate assaults on their environment, health, and wellbeing have fought back through public demonstrations, civil disobedience, and peaceful protest. The right to protest and dissent has been instrumental to climate and environmental justice victories such as restricting the use of toxic pesticides that disproportionately harm farmworkers, defeating dangerous and climate-damaging pipelines such as Keystone XL, and countless others.¹⁸ In continuing the fight for climate and environmental justice, it is more important than ever to understand the fossil fuel industry’s retaliatory playbook.

DAKOTA ACCESS PIPELINE

In 2016, demonstrations against DAPL at Standing Rock brought conversations about the dangers of oil and gas pipelines, Indigenous sovereignty, and water rights to kitchen tables across the globe. The scope of the Standing Rock resistance was monumental. In the words of Ruth Hopkins, a reporter from Indian Country Today, “it’s historic, really. I don’t think anything like this has ever happened in documented history.”²⁰ During the course of the protests, hundreds of tribes came together to stand with the Standing Rock Sioux, and the road into Sacred Stone Camp at Standing Rock was lined with flags from tribal nations across the globe.²¹ Thousands of Indigenous water protectors and invited movement allies came through the camp, municipalities across the country passed resolutions of support, and 1.3 million people “checked in” at Standing Rock on social media in a digital demonstration of solidarity.²²

This wave of public attention triggered a multi-pronged opposition strategy aimed at undermining the Standing Rock movement and its broader support. Energy Transfer Partners (ETP), the operator of DAPL, and its private security forces carried out an extensive surveillance operation, acquired militarized policing

COMMERCIAL OPERATIONS START YEAR:

2017

STATES ON PIPELINE ROUTE:

NORTH DAKOTA, SOUTH DAKOTA, IOWA, ILLINOIS

PROJECT OWNERS:

**ENERGY TRANSFER PARTNERS (38.25%),
ENBRIDGE (28%), PHILLIPS 66 (25%),
MARATHON PETROLEUM (9%)¹⁹**

and security equipment, and attempted a public relations campaign that depicted water protectors as criminals. Local law enforcement authorities—working side-by-side with state police, the Federal Bureau of Investigations (FBI), the DHS, and ETP’s private security force—responded to protesters with brutal force, soaking them with water in freezing temperatures and shooting them with rubber bullets at close distance. ETP and its well-connected allies fueled retaliatory efforts to prevent #NoDAPL momentum from spreading, filing lawsuits intended to chill dissent and exploiting the false specter of violent protest to advocate for aggressive security preparation and anti-protest laws across the country.



Dakota Access Day of Action San Francisco, November 15, 2016.

© Michael Short / Greenpeace

Dakota Access Pipeline Timeline and Key Dates

-  Legal and Legislation Action
-  Project Milestones
-  Movement Actions
-  Protest Suppression



DECEMBER 2014

Texas-based ETP applied for permits to build DAPL. The pipeline project was designed to carry crude oil from the Bakken shale oil field in northwest North Dakota to an oil storage and transport facility in Illinois, crossing North Dakota, South Dakota and Iowa. Initially, the pipeline was mapped to cross the Missouri River ten miles north of Bismarck, North Dakota, but was redirected at least in part due to its planned proximity to the state capital's drinking water. The DAPL plan draft was amended to put the river crossing a half mile from the Standing Rock Sioux reservation.²³



APRIL 1, 2016

Indigenous youth leaders from Oceti Sakowin Youth & Allies, the One Mind Youth Movement, and Indigenous leaders, including LaDonna Brave Bull Allard, established a small prayer camp on the north end of the Standing Rock Sioux reservation, just off the DAPL route. This camp became the base for a global protest movement against DAPL—over the next six months, the camp brought together Tribal leaders and Indigenous youth, farmers, environmentalists, justice organizations, and other individuals called to defend sacred Sioux land.²⁶



APRIL 24, 2016

Indigenous youth runners set off on a 500-mile relay from the Standing Rock Sacred Stone Camp to Omaha, Nebraska, to deliver a letter to the Army Corps of Engineers, demanding the agency deny DAPL permission to cross the Missouri River.²⁸



SEPTEMBER 2015

The Standing Rock Sioux Tribe passed a resolution stating that “the Dakota Access Pipeline poses a serious risk to the very survival of our Tribe and ... would destroy valuable cultural resources.”²⁴ As a sovereign nation, the tribe declared that the construction of the pipeline violated Article II of the 1868 Treaty of Fort Laramie, which guaranteed the “undisturbed use and occupation” of the reservation lands surrounding the proposed location of the pipeline.²⁵



APRIL 22, 2016

The U.S. Army Corps of Engineers office determined that Standing Rock Sioux cultural sites would not be impacted by direct construction of DAPL, despite the identification of more than 30 historical or cultural sites within a 1-mile radius of building locations.²⁷



JULY 2016

The Standing Rock Sioux Tribe sued the Army Corps of Engineers, alleging that they failed to consult tribal leadership before approving pipeline permitting, therefore violating the National Historic Preservation Act. The Tribe stated that the Corps “effectively authorized construction of the vast majority of the pipeline in and around federally regulated waters without any provision to ensure against destruction to culturally important sites.”²⁹



SEPTEMBER 2016

Unlicensed DAPL security guards pepper sprayed and unleashed dogs on Indigenous water protectors defending a sacred tribal burial site from bulldozing.³⁰



DECEMBER 2016 – JANUARY 2017

Shortly after a federal judge declined a request for an injunction to stop construction on DAPL, the Obama administration announced that it would not permit the project to continue.³² Less than two months later, newly elected President Donald Trump issued an executive order giving DAPL the green light to proceed with construction.³³



MARCH 2020

Nearly three years after oil began flowing through DAPL, lawsuits filed by the Standing Rock Sioux resulted in an order from a federal judge requiring the Army Corps of Engineers to conduct a full environmental review of the pipeline.³⁵



NOVEMBER 2016

Law enforcement deployed rubber bullets, tear gas, water cannons, and water hoses in freezing temperatures against protesters demonstrating on the Blackwater Bridge at Standing Rock. More than 300 people were injured, and 26 were transported to a local hospital.³¹



JUNE 2017

DAPL entered commercial operations.³⁴



SEPTEMBER 2023

Federal officials released a draft environmental impact statement and opened it for public comment and review. This review will be a key determinant in the federal government's decision whether to reissue permits for the pipeline. There are currently five options in consideration for compliance, including rerouting the pipeline.³⁶

Fossil Fuels and the Political Landscape

North Dakota's Crude Oil Boom Resulted In Pervasive Fossil Fuel Influence

By 2014, new shale drilling technology had opened the floodgates for the Bakken oil field—North Dakota production surged from about 123,000 barrels per day in 2007 to more than one million in 2014.³⁷ According to a report jointly published by the Center for Public Integrity and Inside Climate News, with the expansion of fracked oil production came billions of dollars in tax revenue for the state—\$4 billion between July 2011 and June 2013—solidifying the influence of oil companies in the state political arena.³⁸ The report also found that oil companies invested millions in North Dakota museums, hospitals, and universities, and contributed thousands of dollars to politicians, making the oil sector the largest single source of political contributions in North Dakota. According to Jim Fuglie, a former state tourism director and head of the state Democratic-Nonpartisan League Party, “what the industry did was they went and bought themselves a friend.”³⁹



North Dakota Pipeline Oil Spill, October 12, 2013.

Fossil Fuel Spending Paved the Way For Political Support of DAPL

With production expanding, fossil fuel interests in North Dakota's Bakken region stood to benefit if they could move oil more quickly and efficiently to the Gulf Coast for refining and export.⁴⁰ Just days before the pipeline was announced in 2014, North Dakota Gov. Jack Dalrymple “urged industry and government officials to build more pipelines to keep pace with the state's oil production.”⁴¹

Both North Dakota and Iowa state politics were awash in fossil fuel money when DAPL secured its permit approvals from both states in 2015 and 2016. Oil and gas interests donated about \$380,000 to Dalrymple's 2012 campaign, and were his top corporate supporters.⁴² To bring the fossil fuel relationship full circle, Dalrymple headed the three-member, all-Republican North Dakota Industrial Commission, which oversaw drilling and pipelines during the construction of the DAPL project.⁴³

In Iowa, the members of the Iowa Utility Board—a key oversight panel for pipelines—are appointed by the governor. Between 2010 and 2016, over \$1 million out of \$18 million total contributions to Iowa Governor Terry Branstad were from energy and natural resources donors—and the Branstad-appointed Iowa Utility Board approved DAPL's permit in March 2016.⁴⁴ After Branstad resigned to join the Trump administration as the United States Ambassador to China in 2017, ETP contributed over \$20,000 to his successor, Governor Kim Reynolds.⁴⁵

ANALYSIS: DAPL Companies Flooded State and Local Politics With Cash

The owners of DAPL (ETP; Phillips 66; and MarEn Bakken, LLC, the joint venture between Marathon Petroleum and Enbridge) contributed more than \$300,000 to 173 state-level candidates in the four states on the pipeline path in the 2014 and 2016 election cycles⁴⁶

TACTIC #1 Sanctioning Hostile Security and Policing

As the resistance at Standing Rock grew, the industry's tactics became more militaristic—in part due to their hiring of the private security firm TigerSwan. Reporting by the Intercept described the group as “a shadowy international mercenary and security firm” which “targeted the movement opposed to the Dakota Access Pipeline with military-style counterterrorism measures, collaborating closely with police in at least five states.”⁴⁷ TigerSwan was founded by James Reese, a former U.S. Army special operations commander. He entered into the private security and intelligence industry as a U.S. military and State Department contractor helping fight the “war on terror” in Iraq and Afghanistan. After the completion of DAPL, Reese established a three-man oil company called Delta Crescent Energy, that would insert itself into Syria amid the chaos of the Syrian Civil War.⁴⁸

Hundreds of leaked internal TigerSwan documents obtained by the Intercept show that the company described water protectors with much the same language that they used to describe “jihadist” fighters

and insurgents.⁴⁹ A February 2017 report attributed to TigerSwan's Chief Security Officer John Porter expressed concern that pipeline opposition would spread to other states through a post-insurgency “bleedout” model, citing the rise of Osama bin Laden and al Qaeda as an example.⁵⁰ Consequently, the report concluded that “we are able to study protesters' successes and failures and so improve our preparedness” and “aggressive intelligence preparation of the battlefield and active coordination between intelligence and security elements are now a proven method of defeating pipeline insurgencies.” For months, TigerSwan expanded surveillance tactics to monitor protestors, despite being denied a license to operate by the North Dakota Private Investigation and Security Board.⁵¹

TigerSwan communicated with agents from the FBI, the DHS, the U.S. Justice Department, the U.S. Marshals Service, the Bureau of Indian Affairs, and state and local law enforcement to share intelligence. During the demonstrations at Standing Rock, TigerSwan provided law enforcement support with “helicopter flights, medics, and security



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Standing unarmed in cold water, water protectors were forcibly repelled by law enforcement officials with tear gas, pepper spray and rubber bullets, November 2, 2016. Earlier, in an effort to access ancestral burial grounds, the water protectors had engineered a makeshift wooden pedestrian bridge to cross the river. Law enforcement officials pulled the bridge apart with boats.

guards, and the private security firm pushed for the purchase (by ETP) of hundreds of thousands of dollars worth of radios for police⁵². The company also ordered a catalog of less-lethal weapons, such as tear gas, for police use.⁵³

Leaked TigerSwan documents show evidence of extensive surveillance that included radio eavesdropping, infiltration of camps and activist groups, and the creation of a “persons of interest” list and databases with identifying information such as photographs and license plate numbers.⁵⁴ Public records reveal that TigerSwan planned for the bidirectional exchange of purported evidence of illegal activity with law enforcement.⁵⁵ Both TigerSwan and the FBI used paid informants who spent months posing as pipeline opponents.⁵⁶ The FBI’s now known informant, Heath Harmon, owned a gun and entered into a romantic relationship with the Oglala Sioux water protector Red Fawn Fallis. Fallis was later arrested and sentenced to years in prison for an incident where the gun was allegedly fired while in her possession.⁵⁷

Local law enforcement used violent tactics against demonstrators. More than 300 water protectors were injured during a November 2016 stand-off, prompting the Water Protector Legal Collective to file a class action lawsuit against the Morton County Sheriff’s Office and other law enforcement agencies for excessive force.⁵⁸ One of the class action representatives, Vanessa Dundon, was hit in the eye by a tear gas canister from a distance of around 20 feet; the resulting injury, a detached retina, required three surgeries, and Dundon’s vision had not fully healed as of August 2020.⁵⁹ Another one of the representatives, Israel Hoagland-Lynn, lost consciousness after being shot in the back of the head

with an impact munition. The resulting injury left him hospitalized and required 17 head staples.⁶⁰

The Indigenous Environmental Network summarized the impact of excessive force on water protectors in their report, Indigenous Resistance Against Carbon:

“Local authorities arbitrarily arrested and harassed water protectors, and both local and TigerSwan forces used aggressive attack dogs and other forms of physical violence, including water cannons in freezing conditions. Despite later vindication by courts, thousands of victims of these abuses — the vast majority of whom were Indigenous — remain scarred by these clubs and beatings...Hundreds were left with arrests on their records and files at the Federal Bureau of Investigation and Department of Homeland Security, with gratuitous charges, including trespassing, despite being arrested on public roads. The brutality of the private security forces played a major role in provoking public outrage.”⁶¹

Of nearly 15,000 water protectors and supporters present at the Standing Rock protests, 837 people faced criminal charges in North Dakota. 393 of the cases were dismissed, 336 resolved by guilty plea or pretrial diversion, 42 ended in acquittal, and 26 in convictions at trial.⁶²

TACTIC #2. Framing Water Protectors and Activists as an Extremist Threat

In a peer-reviewed study examining the fossil fuel industry’s push to target climate protesters, researcher Grace Nosek wrote that the “threat against lawful protest is most greatly felt where those who disagree with climate protesters have led a rhetorical push to label such protesters as terrorists and extremists.”⁶³ According to Nosek, this extreme rhetorical framing contributes to militarized

responses to protesters and helps advance legislative proposals targeting them.

During the demonstrations at Standing Rock, North Dakota law enforcement and officeholders made frequent claims that the camps harbored violent demonstrators and terrorists. They spread false information about tactics and weapons used, and frequently painted the entire

movement as violent and dangerous.⁶⁴ After the camps at Standing Rock saw a surge in public support through the fall and winter of 2016, some law enforcement talking points about protesters were prepared by public relations firms with links to the Republican Party and the National Sheriffs' Association.⁶⁵ Fossil fuel interests developed a calculated strategy to divert attention away from the demonstrators' actual aims and concerns over Indigenous treaty rights and water/environmental protection, by framing them as chaotic and violent outsiders.⁶⁶

One of the earliest and most pervasive examples of false rhetoric used by North Dakota law enforcement began with a statement from Morton County Sheriff Kyle Kirchmeir. Kirchmeir stated on television that protesters were armed with firearms and “pipe bombs,” threatening the safety of police officers and DAPL workers.⁶⁷ He later recanted this dangerous accusation. Angela Bibens, a lead attorney for the Oceti Sakowin camp, told the Los Angeles Times that the “weapons” Kirchmeir referenced were actually ceremonial pipes—

“this is a profound cultural misinterpretation of what are chanupas, or peace pipes.”⁶⁸ The Los Angeles Times also reported that on at least two occasions, the Morton County Sheriff's Department alleged that Standing Rock demonstrators were carrying bows and arrows, only to later state that these accusations were not true.

In a January 2017 interview published by the Bismarck Tribune, Cass County Sheriff Paul Laney smeared demonstrators as “eco-terrorists” and likened Standing Rock to “the mecca” where “140 years of perceived Native American oppression came together”—a statement that simultaneously ignored a long history of American oppression and the genocide of Indigenous Peoples, and painted the Indigenous organizers at Standing Rock as extremists.⁶⁹ Following this push to villainize protestors, North Dakota House Rep. Keith Kempenich and six co-sponsors introduced a bill to eliminate driver liability for “unintentionally” hitting protesters.⁷⁰ To make the case for the bill, Kempenich told CNN that the demonstrations at Standing Rock,



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A phalanx of National Guard officers and police face a water protector holding an eagle feather at a camp near the Standing Rock Reservation, October 27, 2016.

“turned from a protest to basically terrorism on the roadways, and the bill got introduced for people to be able to drive down the roads without fear of running into somebody and having to be liable for them.”⁷¹ It appears that Kempenich’s driver liability bill was the first of its kind.⁷² Since then, 29 similar bills have been introduced in 17 states, mainly as a backlash to Black Lives Matter protests.^{73,74}

According to the Intercept, TigerSwan also “attempted a counter information campaign by creating and distributing content critical of the protests in social media.”⁷⁵ This public relations strategy to shift public opinion was assisted by Off the Record Strategies, MarketLeverage, DCI Group and the National Sheriffs’ Association, which helped craft messaging, plant pro-pipeline articles, and produce content such as “wanted”-style posters depicting water protectors

as “Professional Protestors with Dangerous Criminal Histories.”⁷⁶ Similarly inflammatory rhetorical framing was used by conservative politicians and think tanks. For example, Seton Motley, a columnist for the Heartland Institute, compared DAPL demonstrators and American hostage-takers in Iran in an article titled “We Don’t Negotiate With (Eco-) Terrorists.”⁷⁷

The battle to own the narrative at Standing Rock fueled attempts at national political intervention. In November 2016, U.S. Senator John Hoeven, U.S. Congressman Kevin Cramer, and Governor Jack Dalrymple wrote a letter to then-president Obama requesting federal law enforcement intervention due to “ongoing — and oftentimes violent” protest activity threatening public safety.⁷⁸ Several months later, Hoeven was elected by his peers in the Republican-controlled Senate to chair the Senate Indian Affairs Committee.⁷⁹

TACTIC #3. Boosting Penalties For Protest

By March 2017, North Dakota and South Dakota had each passed laws restricting the right to peaceful assembly.⁸⁰ North Dakota expanded the scope of its criminal trespass offense, which carries a penalty of up to 30 days in jail and a \$1,500 fine, and created a non-criminal trespass offense allowing officers to issue citations with a \$250 fine for trespassing.⁸¹ North Dakota also introduced new penalties for protesters who conceal their identities while committing any criminal offense (including minor offenses such as jaywalking), setting the penalties at up to one year in jail and a \$3,000 fine, and increased penalties for protesters engaged in activities defined as rioting, setting the penalties at up to ten years in prison and a \$20,000 fine.⁸² South Dakota expanded the governor’s authority to restrict protests on public lands and boosted penalties for protest-related infractions, setting the terms for criminal trespass and obstructing traffic at one year in jail, a fine of \$2,000, or both.⁸³

The companies responsible for DAPL helped spread anti-protest laws around the country. In 2017, Marathon Petroleum pushed for ALEC to adopt its model fossil fuel anti-protest bill, which boosts penalties for infractions that include trespassing near,

or impeding, energy infrastructure.⁸⁴ (The importance of this model bill, which ALEC formally adopted in January 2018, is further examined on page 30 of this report.) From 2018 onward, Marathon Petroleum and Enbridge each lobbied for similar fossil fuel anti-protest bills in at least five states and ETP in four.⁸⁵ To justify the need for such laws, anti-protest bill sponsors across the country used fossil fuel industry talking points, which included resentful and misleading comments regarding the movement at Standing Rock.

In 2019, North Dakota enacted a fossil fuel anti-protest law carrying the potential for five years of prison time, \$10,000 in fines, or both, for protests near existing and planned pipelines.⁸⁶ The law also increased liability for organizations that support protesters by treating such support as a criminal conspiracy, punishable by a \$100,000 fine. South Dakota enacted a fossil fuel anti-protest law in 2020, carrying the potential for up to two years in prison and \$4,000 in fines for protests near energy infrastructure. The law also entitled the owners of energy infrastructure to seek restitution from individual protesters and their supporters convicted for related offenses.⁸⁷

TACTIC #4. Costly Lawsuits to Chill Dissent

Energy Transfer Partners v. Greenpeace

In the summer of 2017, ETP filed a baseless \$900 million RICO lawsuit in North Dakota against Greenpeace, BankTrack, and the Earth First! movement.⁸⁸ A Federal Judge dismissed both BankTrack and Earth First! from the case, and requested ETP to amend its complaint against Greenpeace after the original failed for procedural reasons. When filing this amended version, the company decided to include five individual defendants and expand the scope of its claims to other pipelines like Bayou Bridge.

The suit attempted to rewrite the history of a movement led by Indigenous Peoples, falsely claiming that Greenpeace and other environmental groups planned, funded, and organized the demonstrations opposing the pipeline at Standing Rock. The allegations included an implausible RICO claim that these groups and others formed a “criminal enterprise” to instigate violence and damage the company.

In 2019, a federal court dismissed ETP’s RICO claims but declined to retain jurisdiction over the remaining state law-based claims.⁸⁹ One week after the federal case was dismissed, Energy Transfer LP and Energy Transfer Operating, L.P. filed a new lawsuit in Morton County, North Dakota state court—including state-based conspiracy claims—against Greenpeace. This remaining lawsuit is scheduled to go to trial in July 2024.

Strategic Lawsuits Against Public Participation Threaten Free Speech

SLAPPs are a legal action designed in large part to silence and intimidate defendants, as well as draining them of the resources necessary for adequate legal defense.⁹⁰ Often in such cases the plaintiff’s claims are weak, or even spurious, because winning the lawsuit is only a secondary aim. The primary aim of such lawsuits is to send a public message to a targeted community of activists or other stakeholders: stay silent. The message to the broader movement is equally clear: be silent, or you could be next. An outcome of SLAPPs is that they remove conversations from the public sphere and shift them into the courtroom, where the plaintiff behind the SLAPP can leverage its access to (typically) vast financial resources to stifle informed opposition. Defendants targeted for SLAPPs almost always have less resources with which to defend themselves and will often incur significant costs, regardless of whether they win or lose

Energy Transfer is not the first company that has leveraged the SLAPP strategy in an effort to strike back at Greenpeace. In May 2016, Resolute Forestry Products filed a CAD \$300 million lawsuit for RICO and other claims in the United States against Greenpeace, Stand. earth and five individual activists. A U.S. federal judge dismissed the lawsuit in 2017, writing in his decision:

“the defendant’s’ speech constituted the expression of opinion, or different viewpoints that [are] a vital part of our democracy.” and “Moreover, many of Greenpeace’s publications at issue rely on scientific research or fact.”⁹¹

Resolute found ways to extend the lawsuit for seven years—an attempt to punish activists for speaking out over the company’s destructive operations in the Canadian boreal forest—but it was fully dismissed in April 2023.⁹²



Petition Delivery to Credit Suisse in New York, November 7, 2018.

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ANALYSIS: SLAPP Suits and Anti-Protest Laws Are Two Sides of the Same Coin to Silence Free Speech⁹³

In a 2022 report, EarthRights International identified 116 cases in the public domain since 2012 where the fossil fuel industry has used strategic lawsuits against public participation (SLAPPs) and other judicial harassment tactics in attempts to silence or punish its critics in the United States.⁹⁴

The vast majority of the cases were filed by companies that have also lobbied for anti-protest laws since 2017. 101 of 116 cases were filed by plaintiffs with known connections to the push for anti-protest laws.

- ExxonMobil, Murray Energy Corporation, Energy Transfer (and its subsidiary Sunoco), Chevron, TransCanada, Millennium Pipeline, and Phillips 66 were plaintiffs in 84 SLAPP suits/subpoenas. All of these companies, or their parent companies, have lobbied for anti-protest laws.
- Drummond Company, Cabot Oil & Gas, Extraction Oil & Gas, and Mountain Valley Pipeline LLC were plaintiffs in 12 SLAPP suits/subpoenas. All of these companies, or their parent companies, belonged to trade groups that have lobbied for anti-protest laws.
- Green Group Holdings and Range Resources were plaintiffs in 5 SLAPP suits/subpoenas. Both companies have used lobbyists who lobbied for anti-protest laws on behalf of other clients.

DIAMOND PIPELINE

The Diamond Pipeline, announced in 2014, was a 440-mile project that would carry crude oil from Oklahoma's Cushing Terminal directly to Valero's 195,000-barrel-per-day Memphis Refinery, crossing Arkansas and the federally recognized Muscogee (Creek) Nation in the process.⁹⁵ Beginning the same year, the project faced resistance from landowners who opposed the companies' use of eminent domain and who were alarmed by the risk of oil spills near rivers and watersheds containing drinking water resources.⁹⁶ However, a larger movement opposing the pipeline formed in 2017, centered primarily on Indigenous environmental resistance and inspired by the Standing Rock protests.⁹⁷ Between January and May 2017, Diamond Pipeline opponents established the Oka Lawa resistance camp and held protests in Oklahoma, Arkansas, and Tennessee. As well as expressing concerns over climate and environmental pollution, Indigenous activists and their allies were deeply disturbed that the pipeline route would intersect the Trail of Tears, where victims of the 19th century forced relocation are buried in unmarked graves.⁹⁸

COMMERCIAL OPERATIONS START YEAR:

2017

STATES ON PIPELINE ROUTE:

OKLAHOMA, ARKANSAS, TENNESSEE

PROJECT OWNERS:

**PLAINS ALL AMERICAN PIPELINE (50%),
VALERO (50%)**

Despite achieving notable inroads, Diamond Pipeline opponents found themselves in a steep uphill battle. The oil industry and its allies, fearful that Standing Rock-like demonstrations could spread across the country, framed environmental activists as criminals and fringe extremists.⁹⁹ Fusion centers along the Diamond Pipeline route also trafficked fears of "environmental rights extremists," despite not possessing credible evidence of such threats.¹⁰⁰ Claims such as these have stigmatizing power that can undercut collective solidarity and justify increasingly harsh state repression toward protest.¹⁰¹ In May 2017, Oklahoma enacted two anti-protest laws with first-of-their-kind, strategic provisions targeting protest near fossil fuel facilities.¹⁰² According to Ashley McCray, who co-founded the Oka Lawa resistance camp, these laws were "pretty successful" in thwarting continued activism.¹⁰³



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Construction on the Bayou Bridge Pipeline in Louisiana, March 23, 2018.

Diamond Pipeline Timeline and Key Dates



Legal and
Legislation Action



Project
Milestones



Movement
Actions



Protest
Suppression



AUGUST 2014

Plains All American announced plans to build the Diamond Pipeline, part of a long-term shipping agreement with Valero Energy.



AUGUST 2016

The City of Clarksville, Arkansas, withdrew its opposition to the Diamond Pipeline in exchange for \$6.6 million in escrow funds for improving Johnson County's water treatment facility.¹⁰⁵ The Diamond Pipeline had already been permitted under a controversial U.S. Army Corps of Engineers program, Nationwide Permit 12, that requires little to no environmental review or public feedback.¹⁰⁶



2015

Diamond Pipeline and its agents told Arkansas landowners that their property would be condemned to obtain easements if they did not grant them voluntarily. The landowners struck back by challenging the company's eminent domain authority in Johnson County Circuit Court. They faced steep odds—Arkansas state law grants oil pipelines an automatic right to eminent domain—and the cases were eventually settled out of court.¹⁰⁴



JANUARY 2017

Demonstrations were held in all three states along the pipeline route: Oklahoma, Arkansas, and Tennessee. On January 16, an estimated group of 40 protested outside Valero's Memphis Refinery.¹⁰⁷ Some protesters were arrested after using concrete-filled barrels to block the refinery's truck entrance. Twelve days later, on January 28, hundreds gathered to protest the Diamond Pipeline in Fayetteville, Arkansas.¹⁰⁸ On January 30, activists from #NoPlainsPipeline, Bold Oklahoma, the American Indian Movement, Black Lives Matter, the Oklahoma Sierra Club, and other groups held a press conference at the Oklahoma Capitol building to announce the formation of a new coalition to oppose the Diamond Pipeline. "There definitely will be an encampment in Oklahoma in the near future," said Mekasi Camp Horinek of Ponca Nation and Bold Nebraska.¹⁰⁹



FEBRUARY 2017

The Muscogee National Council expressed unanimous opposition to the Diamond Pipeline in a resolution. Tribal councilors had previously pledged to accommodate the project, but new information about oil and gas pipelines in general, and the Diamond Pipeline in particular, was responsible for the change of policy.¹¹⁰



MAY 2017

Oklahoma Governor Mary Fallin signed HB 1123 and HB 2128 into law. The bills, which were supported by the oil and gas industry, carried prison time and harsh fines for trespassing or interfering with so-called “critical infrastructure” facilities, as well as creating liability for organizations that support protesters, in part by treating such support as a criminal conspiracy.¹¹³



DECEMBER 2017

Diamond Pipeline finished construction and entered into operations.



MARCH 2017

Ashley Nicole McCray, founder of #NoPlainsPipeline, set up the Oka Lawa camp with other activists on Choctaw Land in Southeast Oklahoma.¹¹¹ According to McCray, some activists noticed aerial surveillance, and were pulled over and questioned while driving nearby the camp.¹¹²



OCTOBER 2017

Members involved with the Oka Lawa camp shifted their efforts to a new location named the Good Hearted People Camp, which focused primarily on community empowerment initiatives without resisting the construction of Diamond Pipeline, specifically.¹¹⁴

Fossil Fuels and the Political Landscape

Big Oil's Towering Influence In Oklahoma

Oklahoma elected officials answer to Big Oil and not the other way around. In the early 2010s, when fracking wastewater injection underground caused increasingly frequent, powerful earthquakes across the state, Big Oil took drastic steps to strangle reform.¹¹⁵ (Among them: lobbying for SB 809, which restricted local governments' ability to regulate oil and gas operations.¹¹⁶) Several years later, when oil market woes plunged Oklahoma into a budget crisis, Big Oil fought back against proposed tax increases and threatened to relocate their drilling to nearby states.¹¹⁷

At the forefront of the industry stood oil barons like Harold Hamm and Larry Nichols, who maintained close relationships with elected leaders. Hamm amassed a family fortune exceeding \$19 billion at the helm of Continental Resources as the company grew to become the largest oil producer in both Oklahoma and North Dakota.¹¹⁸ He enjoyed a close relationship with Scott Pruitt during Pruitt's stints as Oklahoma Attorney General and EPA Administrator. In the former role, Pruitt was at the center of a "secretive alliance" of energy firms and attorneys general that coordinated to oppose environmental protections.¹¹⁹ In the latter role, Pruitt attended dozens of closed-door events with fossil fuel

executives.¹²⁰ Nichols, the co-founder of Devon Energy and a former chairman of the American Petroleum Institute (API), held a close relationship with Mary Fallin, who served as Governor from 2011 to 2019.¹²¹ In 2016, Fallin, a former ALEC "legislator of the year," established an "Oilfield Prayer Day" in Oklahoma to "thank God for the blessings created by the oil and natural gas industry and to seek His wisdom and ask for protection."¹²² It would be under Fallin's leadership—and not lacking input from the fossil fuel industry—that Oklahoma's fossil fuel anti-protest bill would be enacted into law.

The fossil fuel industry used trade groups, as well as personal relationships with elected officials, to assert its power: namely, the Oklahoma Independent Producers Association (OIPA) and the Oklahoma Oil and Gas Association (OKOGA). Hamm was a long-time board member and the former chairman of OIPA.¹²³ OKOGA's board included representation from Devon Energy, ExxonMobil, BP, Chevron, Phillips 66, and Enbridge, all of whom were also members of API, along with Plains All American, and four of whom were members of AFPM, where Valero Energy's CEO would be named vice-chairman in 2017.¹²⁴

ANALYSIS: Board-level OKOGA Companies' Lobbyists Reported Thousands In Spending¹²⁵

Between January and May 2017—when Oklahoma's fossil fuel anti-protest legislation was on its way to becoming law—board-level OKOGA companies' lobbyists reported \$23,473.54 in expenditures (not including lobbyist compensation, which the state does not require to be reported.)¹²⁶

Among these expenditures were more than 30 reported meals with the authors of HB 1123 and HB 2128. One of the authors, Rep. Mark McBride, was treated to a \$174.39 dinner by a lobbyist for the oil company OneOK.

Another expenditure was for tickets to see the Oklahoma City Thunder: a birthday gift for Sen. Bryce Marlatt and two of his friends in the Senate paid for by a lobbyist for Devon Energy.

Over Years, Local Police Accepted Payments and Briefings From Pipeline Companies

In 2017, Diamond Pipeline LLC donated \$1 million to first responder organizations in Oklahoma and Arkansas, according to a press release in local news.¹²⁷ A spokesperson for Plains All American said that first responders received “additional training and equipment to respond safely to the hazards they may encounter in service of their community.” The average grant value was reportedly between \$7,000-\$10,000, “and, in some cases, represent as much as 100 percent of the receiving depart-

TACTIC #1 Stigmatizing Protest

Law enforcement agencies in Oklahoma, Arkansas, and Tennessee made claims that the movement opposed to the Diamond Pipeline could turn violent at any time, echoing fossil fuel industry rhetoric.¹³⁰

In April 2017, when the Washington Examiner published a troubling, and mysteriously leaked, government report titled, “Potential Domestic Terrorist Threats to Multi-State Diamond Pipeline Construction.”¹³¹

The report, which was attributed to the DHS, and Oklahoma, Arkansas, and Tennessee fusion center entities, claimed that “environmental rights extremists” were the most likely domestic terrorist threat to the Diamond Pipeline project, while also admitting to not possessing any credible information regarding such threats. Fusion centers across the country, including the Oklahoma Information Fusion Center, have a track record of coordinating with fossil fuel companies and perhaps even serving private interests rather than public safety.¹³² Although the cause for the leak has remained unknown, similar government leaks are often deliberate and politically-motivated, according to Margaret Kwoka, a University of Denver Sturm College of Law professor who was interviewed by DeSmog.¹³³ Notably, the Washington Examiner is owned by the fracking billionaire and former API board member Philip Anschutz.¹³⁴ Shortly after the report was published by

ments’ annual budgets.” It is unknown whether any of the training sessions or equipment were protest-related.

Years earlier, however, local law enforcement officials from Oklahoma and Nebraska, and the FBI, came together for a briefing delivered by the Keystone XL owner TransCanada about the threat posed by environmental activists and local landowners.¹²⁸ PowerPoint slides from the 2013 briefing included a list of individuals previously arrested for nonviolent protest. According to Inside Climate News, the FBI returned to Oklahoma in 2017 to train local police on how to handle the Oka Lawa protest camp.¹²⁹

the Washington Examiner, its claims were reproduced by Fox13 Memphis.¹³⁵

One section of the leaked fusion center report listed out “Behavioral Indicators of Planned Violence,” which all but erased the distinction between non-violent civil disobedience and violent extremism. Among the indicators:

Signs of trespassing or suspicious persons in construction areas possibly indicating pre-incident surveillance; [...]

Reports of individuals wearing all dark or black clothing and mask or bandanas without a reasonable explanation; [...]

Reports of “direct action” training camps [...]

Unsurprisingly, the police response to demonstrations in all three states reflected significant distrust toward protesters.¹³⁶ Nearly 50 police and fire vehicles responded to the January 16 protest outside Valero’s Memphis Refinery, where some protesters locked themselves to concrete-filled barrels: “a large showing out of concern the barrels could explode,” according

to local news.¹³⁷ A 22-year old protester who locked himself to Diamond Pipeline construction equipment in Arkansas was arrested under felony charges carrying up to six years in prison and \$10,000 in fines, after Delta Directional Drilling filed a criminal complaint alleging damages.¹³⁸ In Oklahoma, Ashley McCray, the co-founder

of the Oka Lawa camp, recalled aerial surveillance and traffic stops where activists were questioned by police near the entrance to the camp. These police measures and rhetoric cast the movement opposing the Diamond Pipeline as outsiders, thus reproducing coercive stigmas that discouraged solidarity and protest.¹³⁹

TACTIC #2. Boosting Penalties For Protest

Oklahoma's HB 1123 was introduced just days after the January 30 press conference that activists, including McCray, held on the steps of the state capitol where they promised to oppose the Diamond Pipeline.¹⁴⁰ The bill, authored by Rep. Scott Biggs, carried new penalties for protests and civil disobedience near so-called "critical infrastructure," an umbrella term that was defined to include energy facilities, crude oil and gas pipelines, railways, telecommunications infrastructure, and more.¹⁴¹

The penalties for trespassing with intent to impede or inhibit such a facility's operations were at least \$10,000 in fines, imprisonment for one year, or both. Willfully damaging, vandalizing, or tampering with such a facility would increase the fines to \$100,000 and the prison sentence to a maximum of 10 years. The bill also sought to create liability for organizations that support protesters by treating such support as a criminal conspiracy, with fines as high as \$1,000,000.

Rep. Biggs and Sen. Bryce Marlatt, who became HB 1123's principal Senate author, were among the fossil fuel industry's unwavering allies in elected office. Both candidates had easily won their elections in 2016, amassing significant fossil fuel donations in the process.¹⁴² Among their donors were at least 15

corporate members of OKOGA, OIPA, and the AFPM (see Table below).

Biggs was not shy about his motivations. "Across the country, we have seen time and time again these protests have turned violent," Biggs said on the House floor when introduced HB 1123.¹⁴³ Moreover, according to Tulsa World, he told the Oklahoma House Judiciary Committee on Criminal Justice and Corrections that the bill was "prompted by oil and gas industry concerns arising from the Dakota Access Pipeline protests."¹⁴⁴ Biggs had accepted \$1,000 from ETP in the 2016 election cycle. Marlatt, too, had accepted \$1,500 from ETP, in a transaction dated November 16, 2016, months after he had already clinched re-election.¹⁴⁵

When HB 1123 passed in the House, Rep. Mark McBride introduced a related bill, HB 2128, that would grant companies the ability to hold protesters and their supporters liable for property damages.¹⁴⁶

Rep. McBride, House co-author Jonathan Echols, and principal Senate author Ann Griffin were also close allies to the fossil fuel industry. They amassed donations from many of the same companies as Biggs and Marlatt.¹⁴⁷ In an appeal to the House, McBride said his bill was an effort to deter "paid protesters."¹⁴⁸

ANALYSIS: Trade Group Members Spent Big On Oklahoma's Anti-Protest Bill Sponsors¹⁴⁹

Company	Trade Group Membership			Donations to Oklahoma anti-protest bill sponsors	
	OKOGA	OIPA	AFPM	2016 cycle	Lifetime (Through 2016)
OIPA		X		\$9,000	\$44,250
Continental Resources		X		\$7,000	\$8,500
Spectra Energy	X (Enbridge)			\$5,500	\$13,750
Unit Corp.			X	\$5,000	\$8,000
Newfield Exploration Co.	X			\$5,000	\$9,000
Chesapeake Energy	X			\$4,500	\$9,500
Devon Energy	X			\$3,500	\$32,000
Chevron Corp.	X			\$3,500	\$27,500
Oneok Inc	X		X	\$3,000	\$6,500
ExxonMobil	X			\$2,500	\$7,150
Bp North America	X		X	\$2,300	\$2,300
Centerpoint Energy			X	\$2,200	\$7,200
Koch Industries			X	\$2,100	\$3,550
Phillips 66			X	\$2,000	\$8,000
Hollyfrontier Corp.	X		X	\$1,001	\$4,504
OIPA			X	\$1,000	\$1,000

Source: FollowTheMoney / OpenSecrets.org

Valero and OKOGA Appealed Directly to Gov. Fallin to Sign Anti-Protest Legislation

Emails obtained by Documented and The Intercept show that Valero and OKOGA appealed directly to Gov. Fallin asking her to sign HB 1123 and HB 2128, after the bills passed in the Oklahoma legislature.¹⁵⁰

“Julie Kumpyuan w/ Valero called to urge you to please sign HB 1123 (regarding making it illegal to trespass on critical infrastructure). They think it will help deter vandalism & disruptive actions,” wrote Fallin’s assistant in a May 1 email to the Governor.¹⁵¹

The Executive Vice President of OKOGA wrote to Fallin on behalf of the association on May 12. The letter stressed that fossil fuel opponents were aiming “to not only interrupt construction of pipeline and oil and gas projects, but to also harm existing facilities” and that HB 2128 was important “to protect all Oklahomans from risk of losing efficient and affordable access to critical services.”¹⁵²

Fallin signed HB 1123 on May 3 and HB 2128 on May 15, 2017.

The Fossil Fuel Industry Used ALEC to Spread Fossil Fuel Anti-Protest Laws Across the Country

Seizing on the successful passage of HB 1123 and HB 2128 in Oklahoma, the fossil fuel industry turned to the American Legislative Exchange Council (ALEC) in its efforts to spread fossil fuel anti-protest laws across the country. Through ALEC, HB 1123 and HB 2128 were combined into a ready-made template bill named the “Critical Infrastructure Protection Act.”¹⁵³ A lobbyist for the trade group AFPM was revealed to have been “intimately involved” in crafting the template bill in leaked audio from an energy conference obtained by The Intercept.¹⁵⁴

Bloomberg reported that “AFPM, and one of its top members, Marathon Petroleum Corp., spearheaded efforts to get ALEC to support the model legislation in 2017, according to two people familiar with the matter.”¹⁵⁵ AFPM and Marathon Petroleum were joined in a letter urging lawmakers to support the proposal by four other trade groups—the American Gas Association, the American Chemistry Council, the Energy Policy Network, and Edison Electric Institute. The letter, obtained by Huffington Post, emphasized that environmentalists targeting critical infrastructure “expose individuals, communities, and the environment to unacceptable levels of risk.”¹⁵⁶

The task force that considered the model bill was co-directed by Grant Kidwell, a former Americans For Prosperity (AFP) and Charles Koch Institute lobbyist, and included representatives from AFPM and major fossil fuel companies such as ExxonMobil, Koch Industries, Duke Energy, American Gas Association and Peabody Energy.¹⁵⁷ The bill was approved in January by ALEC’s Private Enterprise Advisory Council—its corporate board—which included executives from AFP, Koch Industries, and ExxonMobil at the time.

Bills based on ALEC’s “Critical Infrastructure Protection Act,” referred to by Greenpeace as fossil fuel anti-protest bills, have spread widely. By the end of 2019, new fossil fuel anti-protest laws had been enacted in ten states: Oklahoma, Iowa, Louisiana, South Dakota, North Dakota, Indiana, Tennessee, Texas, Missouri, and Wisconsin. By the end of 2021, the number of states with fossil fuel anti-protest laws had grown to 17 with the addition of Kentucky, West Virginia, Mississippi, Ohio, Kansas, Arkansas, and Montana. At the time of writing, 22 states have such laws due to the addition of Alabama in 2022, and North Carolina, Utah, Oregon, and Georgia in 2023 (these bills are discussed in the “2023 and the Road Ahead” section).¹⁵⁸

ALEC has played a crucial role spreading these bills. ALEC-affiliated legislators sponsored or authored these bills in 18 out of the 22 states where they were passed.¹⁵⁹ In a 2019 email, ALEC took credit for “educating” legislators about “critical infrastructure protection” in seven states, five of which have enacted such bills into law.¹⁶⁰

In general, Republican lawmakers are receptive to ALEC model legislation. According to an investigation by USA Today, The Arizona Republic, and the Center for Public Integrity, “bills based on ALEC models were introduced nearly 2,900 times [...] from 2010 through 2018, with more than 600 becoming law.”¹⁶¹ Carrying model legislation can bring long-term benefits such as relationships and campaign financial support that further lawmakers’ careers, according to multiple experts quoted in the investigation.

ATLANTIC COAST PIPELINE AND MOUNTAIN VALLEY PIPELINE

The Atlantic Coast Pipeline (ACP) and the Mountain Valley Pipeline (MVP), sought after by the fossil fuel industry to uncork Appalachian fracked gas growth, drew massive and sustained grassroots resistance. Both pipelines were announced in 2014, but it was not until 2020 that ACP would be canceled, a major victory for concerned residents, community leaders, and environmentalists who opposed the project at every step. If built, the \$8 billion, 550-mile pipeline would have crossed steep mountains, sensitive watersheds, and countless streams, and disproportionately impacted low-income and communities of color.¹⁶⁴ Compressor stations were planned for construction in the historically Black, Freedman-built community of Union Hill in rural Buckingham, Virginia, and a census block in Northampton County, North Carolina, where 79% of the population is Black.¹⁶⁵ The pipeline would have ended in Robeson, North Carolina, the most ethnically diverse rural county in the United States and the ancestral home of the Lumbee Tribe of North Carolina.¹⁶⁶ When it was canceled, ACP was over two years behind schedule, billions of dollars over budget, and still lacked certain permits due to a string of successful legal challenges.¹⁶⁷

MVP, like ACP, entailed significant safety, conservation, and environmental justice risks, enough so that the company has amassed hundreds of violations and had one of its proposed compressor stations struck down under the Virginia Environmental Justice Act.¹⁶⁸ Yet, construction on the pipeline resumed in 2023, resulting from a deal sought by U.S. Sen. Joe Manchin that permitted MVP by fiat and sharply limited court review of the project.¹⁶⁹

Despite prolonged efforts, the fossil fuel industry and its allies in government have had only mixed success at quashing years-long opposition to these pipeline projects. Fusion center entities have viewed the opposition as a hotbed for potential violent extremism, a false political trope that has been widely promoted by the industry to clear the way for faster pipeline construction.¹⁷⁰ At the same time, they have coordinated extensively with Dominion and EQT Corporation (EQT) to monitor activism, effectively serving the private interests of these companies.

ATLANTIC COAST PIPELINE

COMMERCIAL OPERATIONS START YEAR:

N/A (CANCELED IN 2020)

STATES ON PIPELINE ROUTE:

WEST VIRGINIA, VIRGINIA, NORTH CAROLINA

PROJECT OWNERS:

DOMINION ENERGY (48%), DUKE ENERGY (47%), SOUTHERN COMPANY (5%)¹⁶²

MOUNTAIN VALLEY PIPELINE

COMMERCIAL OPERATIONS START YEAR:

N/A (UNDER CONSTRUCTION AS OF SEPTEMBER 2023)

STATES ON PIPELINE ROUTE:

WEST VIRGINIA, VIRGINIA

PROJECT OWNERS:

EQT CORPORATION/EQUITRANS MIDSTREAM (48%), NEXTERA (31%), CON EDISON (10%), ALTAGAS (10%), RGC MIDSTREAM, LLC (1%)¹⁶³

Starting in 2018, Virginia and West Virginia have used escalating fines, arrests, and subjective buffer zones that deter civil disobedience, but many protesters have adapted or endured in the face of these pressures.

Since 2020, fossil fuel anti-protest laws have been enacted in West Virginia and North Carolina, posing a threat to continuing resistance to the Mountain Valley Pipeline. These laws carry extreme and unnecessary penalties for conduct that was already addressed under pre-existing law. North Carolina's law, passed in June 2023, is especially draconian: attempting to obstruct, impede, or impair pipeline construction can be punished by more than 15 years in prison and a mandatory \$250,000 fine.¹⁷¹ No such fossil fuel anti-protest laws have passed in Virginia. But in September 2023, MVP took direct aim at its critics through a lawsuit that seeks to constrain more than 41 individuals and two organizations from activities that are alleged to have slowed construction of the MVP project, including fundraising, as well as seeking more than \$4 million in damages.¹⁷² These threats to protest and dissent are compounded by anti-environmental backlash that has been manufactured by the fossil fuel industry and their back-pocket elected officials, particularly in West Virginia.

Atlantic Coast Pipeline and Mountain Valley Pipeline Timeline and Key Dates



Legal and
Legislation Action



Project
Milestones



Movement
Actions



Protest
Suppression

Blue = Atlantic Coast Pipeline

Orange = Mountain Valley Pipeline

Grey = Both Pipelines

SEPTEMBER 2014

On September 2, Dominion, Duke Energy, Piedmont Natural Gas, and AGL Resources announced a joint venture to build and own ACP.¹⁷³ Within a week, more than 150 Augusta County, VA, residents gathered for a town hall discussion on how to fight the pipeline, and 22 environmental and citizens groups joined together to form the Allegheny-Blue Ridge Alliance (ABRA).¹⁷⁴

2014–2018

Landowners along both pipeline routes, including at least 178 VA landowners and 103 WV landowners, refused land surveyors permission to enter their properties, sparking court challenges.¹⁷⁶ In VA, the courts repeatedly sided with ACP and MVP due to a controversial law allowing gas companies to access private property without landowner permission, whereas in WV, the courts sided with landowners in a 2015 ruling, blocking MVP from entering private property to survey.¹⁷⁷ Meanwhile, coalitions like ABRA continued holding regular meetings, attending public hearings, and submitting comments; and protesters took to street marches, including a blockade at Dominion's Richmond headquarters in February 2015.¹⁷⁸

JANUARY 2018

ACP secured permission from FERC to begin initial tree-clearing, but pipeline construction in all three states remained on hold due to the lack of state permits.

SEPTEMBER 2014

EQT and NextEra Energy announced a joint venture to build and own the MVP, which they expected to begin service in the fourth quarter 2018.¹⁷⁵

JANUARY 2018

MVP secured permission from FERC to begin full pipeline construction in West Virginia, sparking a wave of nonviolent direct action. Details on the resulting aerial blockades, such as tree-sits, are highlighted below.

- **FEBRUARY 26:** The first tree-sitters appeared in Jefferson National Forest, aiming to block access to a drill-site for MVP to pass through Peters Mountain. Tree-sits here continued until June 1.¹⁷⁹
- **MARCH 28:** The anonymous activist “Nutty” embarked on a “monopod” blockade blocking a service road on the other side of Peters Mountain.¹⁸⁰ In April, the U.S. Forest Service closed access to the road and began preventing supporters from delivering food and other supplies to Nutty, who eventually descended on May 23, days after they said their reserves ran out.¹⁸¹
- **APRIL 2:** Theresa “Red” and Minor Terry embarked on a tree-sit on property their family has owned for generations. On April 11, local police told the Terrys that their family and friends could no longer deliver them food. (After public outcry, the police began supplying Red and Minor with daily bagged bologna sandwich meals.) On April 20, MVP asked a federal judge to hold the Terrys in civil contempt and remove them. Facing escalating fines and forcible removal, the Terrys descended on May 5.¹⁸²
- **APRIL 20:** Anonymous activists embarked on a tree-sit on a separate property in Franklin County, VA called Little Teel Crossing. The landowners, who claimed no connection to the tree-sitters, were sued by MVP for neglecting to remove the tree-sitters on MVP's behalf. One of the tree-sitters was injured on May 25, when MVP workers cut branches that were dangerously close to the activist's perch. The last activist at Little Teel Crossing descended on May 28 after facing contempt of court charges.¹⁸³
- **APRIL 22:** Supporters who crossed the police buffer zone surrounding Nutty were ordered to the ground, shackled, and arrested by armed police.¹⁸⁴
- **MAY 21:** The anonymous tree-sitter “Fern” set up a monopod near Nutty, just days before Nutty's descent, and was forcibly removed by U.S. Forest Service and Virginia State Police less than two weeks later.¹⁸⁵

**JUNE – AUGUST 2018**

ACP construction began in West Virginia and North Carolina in June and July, but was halted in August due to the 4th Circuit Court of Appeals' finding that the National Park Service's decision to allow the pipeline under the Blue Ridge parkway was "not accompanied by any explanation, let alone a satisfactory one."¹⁸⁶

**OCTOBER 2019**

FERC ordered a stop to all work on MVP, except stabilization and restoration activities, following a decision by the 4th Circuit Appeals Court that rescinded a U.S. Fish and Wildlife Service permit due to its failure to consider risks to four endangered or threatened species.¹⁸⁸

**JULY 2020**

ACP was canceled.

**SEPTEMBER 2023**

MVP files a retaliatory lawsuit against Appalachians Against Pipelines, Rising Tide North America, and 41 individuals in Montgomery County Circuit Court. The lawsuit seeks to prohibit the groups from encouraging, promoting, or accepting donations for activities meant to slow construction of the MVP project, as well as seeking \$4 million in damages.¹⁸⁹

**JULY 27, 2018**

The 4th Circuit Court of Appeals annulled MVP's right of way through federal land due to inadequate analysis of alternative routes, effectively halting work in the Jefferson National Forest.¹⁸⁷

**JULY 2022–JULY 2023**

In July 2022, Senator Manchin made a deal with Democratic leadership that would approve MVP's construction by fiat in exchange for his vote on the Inflation Reduction Act. Environmental and grassroots groups organized to defeat the deal three times, but the next year, in a similar move, Manchin successfully fought for provisions in the 2023 Fiscal Responsibility Act that sharply limited courts' jurisdiction over the project. In July 2023, FERC approved MVP construction to restart.

Fossil Fuels and the Political Landscape

West Virginia: Fossil Fuel Empire?

The fossil fuel industry's grip over West Virginia politics is evidenced by its ties to government officials, as well as its political spending. West Virginia's governor since 2017, Jim Justice II, inherited a coal business from his father. A billionaire and climate denier, Justice has said that God will "give us time" to fix climate change- "if" it exists, concluding that "we don't want to forget about the coal and natural gas industries" in West Virginia and it's time to "Drill, baby, drill!"¹⁹⁰ Justice's appointee for Secretary of Commerce, Woody Thrasher, is the co-founder and former president of the Thrasher Group, a firm that provides technical services for oil and gas pipeline projects and was caught surveying along the ACP route in North Carolina without a valid license.¹⁹¹ As the main regulator and promoter of business in the state, Sec. Thrasher was tasked with overseeing an 84-billion dollar West Virginia petrochemical deal with China, the Appalachian Storage and Trading Hub, a deal which the Thrasher Group stood to benefit from.¹⁹² West Virginia Attorney General Patrick Morrisey is a member and former chairman of the Republican Attorneys General Association, an ALEC-like group that connects paying fossil fuel executives with ultra-conservative attorneys general to strategize on fighting environmental regulation, among other activities.¹⁹³

As for political spending, the Energy and Natural Resources sector contributed \$4.6 million to state election campaigns since the 2014 election cycle, when ACP and MVP were announced.¹⁹⁴ Of that, \$301,310 has gone to supporting Jim Justice and \$479,242 has gone to supporting Patrick Morrisey.¹⁹⁵

Duke and Dominion's Powerhouse Politics

In Virginia and North Carolina, the monopolies behind ACP are enormously influential. Since 2014, Dominion has contributed over \$16 million to Virginia state elections, dwarfing its closest energy sector peer by about eight times, and reported more than \$3.2 million on lobbying across both Virginia and North Carolina.¹⁹⁶ Over the same timeframe, Duke has channeled \$2.3 million into North Carolina election campaigns through direct donations and numerous PACs.¹⁹⁷ Its lobbying efforts in North Carolina have totaled more than \$6.7 million, and its "influence spending" could top \$80 million *annually*, according to an analysis by NC WARN that covers about a dozen spending categories including public relations, civic relations, philanthropy, and business association memberships, in addition to state and federal election spending and lobbying.¹⁹⁸

The companies struck deals in both states that were criticized as blatant "pay-to-play" schemes. Virginia



Atlantic Coast Pipeline Training Camp in Virginia, September 16, 2017.

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Governor Terry McAuliffe brokered a “guarantee” that Virginia would approve ACP in exchange for a \$57.8 million payment to public and private conservation entities, and two MVP deals worth \$30 million total that preemptively absolved the companies of responsibility for damage to Virginia’s forests, water resources, and historic properties.¹⁹⁹ North Carolina Governor Roy Cooper also struck a \$57.8 million deal with ACP: a mitigation fund intended to compensate for “unavoidable effects of the ACP on the interior forest habitats, open-space lands, water bodies, and natural resources of the communities along the ACP’s route.”²⁰⁰

Officeholders in both states held direct or indirect interests in ACP and its joint owners. Five Virginia legislators who threw their weight behind ACP also had investments in Dominion. Among them was Senator Bill DeSteph, the primary sponsor of 3 out of the 6 fossil fuel

anti-protest bills introduced in Virginia, who held more than \$250,000 of Dominion stock.²⁰¹ North Carolina Senator Dan Blue’s legal firm was procured for legal services by Atlantic Coast Pipeline LLC in at least 32 land condemnation proceedings along the pipeline route.²⁰² At the same time, Sen. Blue co-sponsored and was the lead spokesperson for SB 559, a bill that Duke Energy extensively lobbied for. Gov. Cooper’s predecessor Pat McCrory, who was serving when ACP was announced in 2014, has a long, documented relationship with Duke Energy — both as a stockholder and former 28-year employee.²⁰³ The McCrory administration worked to dramatically expand natural gas infrastructure in North Carolina, and ardently supported ACP and Atlantic drilling for gas.²⁰⁴ McCrory also served as a spokesperson for the Koch-controlled lobbying group Americans For Prosperity (AFP) from 2009 to 2011.²⁰⁵

ANALYSIS: Pipeline Owners, Shippers, and Trade Groups Reported More Than \$21 Million In Lobbying Across West Virginia, Virginia, and North Carolina²⁰⁶

Pipeline owners, prospective shippers, and trade groups that publicly supported the MVP and ACP projects spent more than \$21.7 million on lobbying based on available data for ACP and MVP project-specific timeframes. Breakdowns by state and stakeholder type are shown below. The data reflect lobbyist compensation and lobbying expenditures for Virginia and North Carolina, but lobbying expenditures only for WV because the state does not require compensation to be reported.

ACP Stakeholders and Aligned Trade Group Lobbying

	Owners	Shippers (excl. Owners)	Trade groups	Total
WV (2017-2020, expenditures only)	\$3,395		\$107,473	\$110,869
VA (2016-2020)	\$2,150,951	\$138,026	\$2,320,636	\$4,609,613
NC (2014-2020)	\$8,090,739		\$3,611,572	\$11,702,311
Grand Total				\$16,422,793

MVP Stakeholders and Aligned Trade Group Lobbying

	Owners	Shippers (excl. Owners)	Trade groups	Total
WV (2017-2022, expenditures only)	\$7,528	\$6,232	\$181,577	\$195,336
VA (2016-2022)	\$408,233	\$803,818	\$3,528,715	\$4,740,766
NC (2014-2023)	\$913,508	\$1,246,968	\$4,189,202	\$6,349,677
Grand Total				\$11,285,780

Public-Private Security Coordination

Dominion and EQT built close relationships with law enforcement in North Carolina and Virginia, which opened the door for potential abuses of law enforcement authority.²⁰⁷ These companies fed recurring intelligence updates and meeting agendas to state police. Some state and local police agencies upheld the cozy relationship by participating in joint meetings, offering to share intelligence back to the pipeline companies, and allowing police officers to work off-duty as private security.

Dominion sent agendas for recurring meetings with state and federal law enforcement

In December 2017, the North Carolina Information Sharing and Analysis Center—a fusion center under the North Carolina State Bureau of Investigation—produced a field analysis report warning that “ACP has the potential to become a regional focal point for ideologically or politically motivated violent extremist actors.”²⁰⁸ Yet the report also admitted to having no specific, credible information that violent actors were targeting the operations.

Public records obtained by the Blue Ridge Environmental Defense League, and reviewed by Greenpeace USA, reveal that Dominion personnel sent meeting agendas for a “recurring Law Enforcement/ACP Security Information Sharing Working Group meeting” to more than a dozen law enforcement personnel across federal and Virginia, North Carolina, and West Virginia state agencies as early as July 2017.²⁰⁹ The first agenda, for a September 5 meeting, included:

ACP Security Information Exchange eRoom [...]

Opposition updates [...]

ETP lawsuit against Greenpeace—Enterprise of Eco-terrorists

Bold Alliance, 350.org, Sierra Club, Veterans Stand (Veteran Service Corps)

September 16, 2017, rally in Richmond, VA (Fight White Nationalism) [...]

StopETP Campaign (September 8-9, 2017) target list

Tiger Swan HQ—Apex, NC

ETP Pipelines—Rover Pipeline, WV

Army Corps of Engineers Office - Nationwide

Roundtable

ETP does not appear to be among the email recipients, despite appearing relevant to items on the agenda.

In ongoing emails, some of the recipients exchanged information about public events that included, for example, a Sierra Club-hosted meeting to discuss Indigenous perspectives on the ACP.

According to Dominion’s Construction, Operation, and Maintenance Plan, local security contractors and/or off-duty police officers would be used to maintain security at worksites.²¹⁰ Emails reveal that Dominion contacted ten local Sheriff’s Offices in North Carolina asking whether they would allow their officers to work off-duty as private security, and nearly all of them answered yes. According to a forwarded attachment, Dominion also prepared a list of questions for the North Carolina State Highway Patrol. Among them:

- *Will the North Carolina State Highway Patrol be willing to consider Dominion Energy support in sponsoring a FEMA Cut Team Training?*
- *Does the North Carolina State Highway Patrol have sufficient cut team equipment to respond to all ACP incidents?*

“Cut Teams” are personnel charged with cutting through equipment used in blockades to remove protesters.

On June 12, 2018, a Dominion security analyst sent an email introduction between the head Security Coordinator for EQT and officials with the North Carolina Information Sharing and Analysis Center.

Melissa and Mike,

Duane Moriarity is the head Security Coordinator with EQT working on the Mountain Valley Pipeline (MVP) project. EQT has recently requested from FERC to extend that project into North Carolina. As you all are aware from our weekly calls, MVP has experienced a bit of opposition in VA and WV. I suspect it will follow them into NC. Especially with that project's proximity to Asheville.

Duane, Melissa Roberts is an Analyst at the North Carolina Information Sharing and Analysis Center (NCISAAC). Mike Harper is a Special Agent at NCISAAC. Both have been working closely with us on ACP security and have been valuable partners.

*Forrest C. Kelley
Senior Intelligence Analyst*

The Virginia Fusion Center Coordinated With EQT and Compared Environmental Activists to Al Qaeda

The Virginia Fusion Center (VFC) encouraged EQT personnel to share information on Mountain Valley Pipeline activity “so the information could be vetted and disseminated to those that need to know.” When tree-clearing and construction were scheduled to begin in 2018, Cynthia Waters, a Virginia State Police intelligence analyst, informed local law enforcement officers that EQT would be in touch to schedule meetings and offered to follow up to discuss “VFC support throughout the project’s duration.”²¹¹

According to the Richmond Times-Dispatch, “[t]he state records also show that the Fusion Center disseminated ‘pipeline situation reports,’ which included information on how many people on Facebook were ‘interested’ in

meetings of groups such as the Sierra Club, Chesapeake Climate Action Network and Preserve Floyd.” Emails obtained by Climate Investigations Center, and reviewed by Greenpeace USA, indicate that the pipeline situation reports were being produced and disseminated daily during March and April 2018.²¹²

A 2019 VFC intelligence assessment, discovered by The Intercept, referred to groups that build citizen support networks opposing pipelines as “criminal environmental groups.”²¹³ This deeply problematic framing was repeated 28 times in the ten-page document. The assessment even used examples from al Qaeda, including a mosque bombing and an Osama Bin Laden quote, to demonstrate insurgent tactics, and warned that the same tactics could be used “in order to gain support and impact pipeline construction in Virginia.”



Atlantic Coast Pipeline Training Camp in Virginia, September 16, 2017.

TACTIC #1 Escalating Enforcement Against Protesters

Through the Courts

After the start of construction in January 2018, MVP turned to the courts in its efforts to clear protesters from the pipeline construction route. Its first attempt, a preliminary injunction aimed at tree-sitters on the West Virginia side of Peters Mountain in the Jefferson National Forest in March 2018, was decisively rejected by Monroe County Judge Robert Irons.²¹⁴

But the company's success rate improved after it turned to the federal court system. In April 2018, MVP petitioned the U.S. District Court to hold Red and Minor Terry in contempt of court for refusing to vacate a tree-sit on their own property.²¹⁵ Several weeks later, U.S. District Court Judge Elizabeth Dillion did just that, and the Terrys complied under the threat of \$1,000 in fines per day and forcible removal by the U.S. marshal.²¹⁶ Judge Dillon also presided over hearings brought by MVP attorneys related to the protests at Little Teel Crossing. The property owners argued that they were unconnected to the tree-sitters and should not be responsible for removing them, but were still found in contempt of court.²¹⁷ Contempt-of-court findings were also used to pressure the tree-sitters at Little Teel Crossing to climb down.²¹⁸

In September 2018, after the first wave of aerial blockades had been cleared, several protesters embarked on one of the longest tree-sits in U.S. history at Yellow Finch Lane in Elliston, VA. MVP won an injunction against the tree-sitters and their support camp in November 2020, resulting in \$500 fines per day in Montgomery Circuit Court.²¹⁹ The tree-sitters refused to comply and were forcibly removed on March 24, 2021. Although the tree-sitters faced criminal charges that would result in months-long jail sentences, MVP also successfully pursued civil charges for \$141,386 in compensation.²²⁰

Through Policing and Security

Law enforcement from the U.S. Forest Service used buffer zones and arrests that prevented food and water from being lifted up to the Peters Mountain activists. The monopod protester, Nutty, says she went six weeks without resupplies before eventually coming down.²²¹

One day, when a group of supporters ducked across the caution tape to bring Nutty daypacks filled with supplies, “at least ten law-enforcement vehicles and over a dozen officers from multiple agencies arrived with assault rifles,” according to Outside Magazine.²²² The supporters were ordered to the ground and at least one was handcuffed and leg-shackled. In a faxed letter to the Forest Service, Virginia attorneys Tammy Belinski and Alan Graf said “No one knows, whether [Nutty] has the strength or volition to leave the pod. If she cannot do so, Forest Service’s actions in continuing to starve her out are tantamount to torture and contrary to human rights and International Law.”²²³ Roanoke County law enforcement prevented supporters from delivering supplies to Red and Minor Terry, but began delivering bagged meals to them after receiving negative media attention.²²⁴

Although many activists were aware of the potential for legal consequences, some were arrested on shaky and increasingly trumped up charges. Two activists were arrested by U.S. marshals in May 2018 for allegedly failing to comply with an officer’s order, despite not having crossed into the easement boundary, according to the activists.²²⁵ In 2019, three non-violent MVP protesters in West Virginia were arrested and charged with felony threats of terrorist acts, each on a separate occasion.²²⁶ And in 2021 and 2022, District Attorneys in Giles County and Roanoke County brought restitution charges against protesters to recover costs associated with police officers’ time.²²⁷ In an email obtained by EarthRights International during the latter lawsuit, the Roanoke County Attorney wrote that billing for higher expenses would be “sending a message that such unlawful and unsafe MVP protesting will not be tolerated in the County and that protesters will be responsible for costs incurred.”

In addition to coordinating with the VFC, MVP’s private security was accused by tree-sitters of harassment with spotlights and loud noise at night, preventing them from sleeping, and filing malicious charges against activists.²²⁸ MVP also proceeded with tree cutting near the tree-sitters at Little Teel Crossing, which the activists described as reckless.²²⁹

TACTIC #2. Boosting Penalties for Protest

West Virginia’s 2020 Fossil Fuel Anti-Protest Bill Was Pushed By the Industry

The West Virginia “Critical Infrastructure Protection Act,” based closely on ALEC’s model legislation, was signed into law by Gov. Jim Justice on April 15, 2020. The Intercept reported several companies and groups that worked to advance the bill: AFPM, Dominion Resources, and the West Virginia Oil and Natural Gas Association.²³⁰ In a celebratory email after the bill passed through the legislature, a lobbyist for AFPM took credit for “organizing the wide base of support.” In the bill introduction year and preceding year, the bill’s primary sponsor, John Kelly, accepted contributions from AFPM members: \$1,000 from Marathon Petroleum and \$500 from ExxonMobil.

Dominion’s role, however, should not be overlooked. Research from The Intercept revealed that a Dominion lobbyist communicated with West Virginia’s House Majority Leader, a West Virginia House Energy Committee lawyer, and lobbyists for EQM and Southwestern Energy about “a bill to address civil disobedience towards pipeline” less than a year before the “Critical Infrastructure Protection Act” was passed. At the time, Dominion occupied the Vice President seat on WVONGA’s board, which had substantial overlap with AFPM, and was registered to lobby for a similar bill in Ohio for the 3rd straight year.²³¹ Later, in 2023, Dominion would lobby for fossil fuel anti-protest legislation in Utah.

North Carolina and Virginia Anti-Protest Legislation

Since 2017, there have been eight anti-protest bills introduced in Virginia, none of which have been enacted into law. Three of them were introduced in August 2020, after outpourings due to the killing of George Floyd shook Richmond, Virginia. None of the bills are closely related to ALEC’s model bill or specifically target trespassing near energy infrastructure.

There is no evidence that the fossil fuel or energy industry had an interest in these bills. But Bill DeSteph, the primary sponsor of four of the bills, appears to be a major ally to Dominion. In addition to holding more than \$250,000 in Dominion stock, DeSteph has accepted \$101,750 in campaign donations from Dominion since 2019 and appeared as an ACP “endorser” on the company’s website.²³² Most of Dominion’s donations to DeSteph were made between 2020 and 2022, even though DeSteph’s next election was not until 2024. Other Virginia anti-protest bill sponsors (including cosponsors) have reaped a combined \$54,500 in political contributions from Dominion.²³³

There have been 12 anti-protest bills introduced in North Carolina since 2017. Several of them appeared to be a direct response to racial justice protests that formed after the police shooting of Keith Lamont Scott (2016) and Andrew Brown Jr. (2021).²³⁴ They included bills that would provide legal immunity for drivers who hit protesters with their car, impose felony charges for any person found to engage in a riot, waive liability for law enforcement officers who injure or kill “using reasonable force under the circumstances and acting in good faith to enforce the laws,” and impose criminal liability on state officials who order police to stand down in response to demonstrations.²³⁵ But it would take until 2023 for North Carolina to enact anti-protest legislation: H 40, a “riot” bill, and S 58, an ALEC-inspired fossil fuel anti-protest bill.

S 58 specifically included energy facilities that are planned or under construction in its definition of “critical infrastructure.” Under the law, according to ICNL, “a group of people protesting the construction of a fossil fuel pipeline could face more than 15 years in prison and a mandatory \$250,000 fine if they impede or impair the construction of a pipeline, for instance by blocking workers’ access to the pipeline construction site.” The bill’s primary sponsor, Sen. Paul Newton, was a long-time Duke Energy employee including President of Duke Energy North Carolina.²³⁶

It is so far unknown whether Duke lobbied for either bill, but in 2022, Duke contributed more than \$176,000 to both bills’ primary sponsors and cosponsors. In addition to Duke, other fossil fuel and energy companies contributed more than \$260,000 to the NC anti-protest bill sponsors in 2022. The #2-7 contributors after Duke were the North Carolina Association of Rural Electric Cooperatives (\$123,700), Dominion (\$57,200), Koch Industries (\$25,800), Norfolk Southern (\$19,750), Marathon Petroleum and Williams Companies (each around \$11,000).²³⁷



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Atlantic Coast Pipeline Training Camp in Virginia, September 16, 2017.

ANALYSIS: Duke and Dominion Have Contributed Massively To Anti-Protest Bill Sponsors Across the Country²³⁸

Duke Energy

State	Total Amount Contributed to Anti-Protest Bill Sponsors (in the bill introduction year and preceding year)	# of Recipients	Top Recipients by Amount (bold name indicates primary sponsor)
North Carolina	\$409,200	74	Dean Arp (\$22,000), Timothy Moore (\$22,000), Warren Daniel (\$19,400), Paul Newton (\$16,300), Danny Britt (\$14,900), Thomas McInnis (\$12,400), John Bell (\$11,200), Destin Hall (\$11,200), Jason Saine (\$10,400)
Ohio	\$65,250	23	Matt Huffman (\$10,000), Robert McColley (\$9,000), Bob Peterson (\$6,000), Steve Wilson (\$5,500), George Lang (\$5,500)
Florida	\$35,500	25	Tom Leek (\$3,000), Daniel Burgess (\$3,000), Sam Killebrew (\$2,000), Chris Latvala (\$2,000), Stan McClain (\$2,000)
Indiana	\$19,300	17	Mark Messmer (\$8,500), Edmond Soliday (\$3,000), Eric Koch (\$1,300)
All States	\$538,750	151	

Dominion Energy

State	Total Amount Contributed to Anti-Protest Bill Sponsors (in the bill introduction year and preceding year)	# of Recipients	Top Recipients by Amount (bold name indicates primary sponsor)
Virginia	\$156,250	7	Bill DeSteph (\$101,750), Frank Ruff (\$32,500), Bryce Reeves (\$7,500), Scott Lingamfelter (\$6,500), Richard Stuart (\$4,500)
Ohio	\$118,500	28	Robert McColley (\$18,500), Matt Huffman (\$12,500), Bob Peterson (\$10,500), William Seitz (\$10,000), Kirk Schuring (\$9,500)
North Carolina	\$84,850	29	Timothy Moore (\$16,600), John Bell (\$6,500), Destin Hall (\$6,500), Todd Johnson (\$6,500), Dean Arp (\$6,000)
Pennsylvania	\$10,750	9	Joseph Scarnati (\$2,000), Patrick Stefano (\$2,000), Elder Vogel (\$2,000), Camera Bartolotta (\$1,500), Kim Ward (\$1,000), John Yudichak (\$1,000)
All States	\$383,850	95	

Source: FollowTheMoney/OpenSecrets.org

TACTIC #3. Manufacturing Anti-Environmental Backlash

ACP companies bankrolled a business coalition that used deceptive research and pro-pipeline messaging in an effort to build public support for ACP construction.²³⁹ The so-called “EnergySure Coalition” paid for one-sided TV, radio, print and website ads that appealed to economic and social justice values.²⁴⁰ To burnish its claims, the coalition used flawed polling data from the Tarrance Group, which openly described itself as a “Republican strategic research and polling firm,” and a biased report that was paid for by Dominion.²⁴¹ Messaging used by the coalition was disparaging toward the pipeline opposition movement, using taglines such as, “Families on the line: Build the ACP” and “ACP opposition: Focused on blocking access to American energy and new jobs.”²⁴² Social scientists refer to arguments like these as “discourses of delay,” which emphasize the downsides of climate policies and raise doubt that climate action is possible.²⁴³ The spread and strategic use of such rhetoric has contributed to making environmentalism “a new front in the culture wars, becoming ever-more enmeshed in broader identity and grievance politics,” according to research by the Institute for Strategic Dialogue.²⁴⁴

The fossil fuel industry and its allies in government have seized on opportunities to stoke cultural divisions and manufacture anti-environmental backlash, which lend credence to efforts to stifle protest and dissent, despite the fact that a supermajority of Americans support climate action.²⁴⁵ After leading a lawsuit against the federal Environmental Protection Agency, West Virginia Attorney General Morrissey co-led an effort opposing ESG investing—an acronym for environmental, social and governance—which he blamed on “the woke left [mission] to change every facet of American life ... and erode our democratic institutions.” West Virginia’s state treasurer Riley Moore and state delegate Zack Maynard have also been key figures in the anti-ESG movement, which was initiated and amplified by fossil fuel lobbyists at groups that included the West Virginia Coal Association.²⁴⁶ In 2021, ALEC’s Energy, Environment,

and Agricultural task force—which included lobbyists for Charles Koch’s Americans for Prosperity Foundation, Koch Companies Public Sector, and AFPM—adopted a model “Energy Discrimination Elimination Act” by unanimous vote.²⁴⁷ The policy was adapted from ALEC’s longtime opposition to boycotts, divestment and sanctions efforts against Israeli occupation of Palestine.²⁴⁸ In 2023, anti-ESG bills were introduced in 37 states, 22 of which became law despite widespread pushback from business lobbyists, workers unions and environmental advocates.²⁴⁹

Perhaps unsurprisingly, the fossil fuel industry and its allies helped manufacture the very basis of the anti-ESG fears they helped spread.²⁵⁰ Large fossil fuel companies routinely publish ESG commitments, a practice that often amounts to greenwashing. Most of the banks and financial institutions targeted by the anti-ESG backlash are still doing plenty of business with fossil fuel companies. Take BlackRock, a recent target of Florida Governor Ron DeSantis, who pulled state investments from the money manager at the end of 2022.²⁵¹ In a panel just weeks earlier, BlackRock’s CEO told the audience “I actually believe we’re going to need hydrocarbons for 70 years.” The company’s investments have also been tied to deforestation and Indigenous rights violations, according to BlackRock’s Big Problem, an advocacy coalition calling on asset managers like BlackRock to rapidly align their business practices with a climate-safe world.²⁵²

LINE 3

In 2014, Enbridge proposed replacing and expanding a segment of its pipeline network known as Line 3. Originating in the tar sands region of Edmonton, Alberta, Line 3 was intended to carry Canadian tar sands oil—a highly polluting form of crude oil—to Enbridge’s 550-acre oil terminal in Superior, Wisconsin.²⁵³ The expansion project would increase Line 3’s capacity from 390,000 barrels per day (bpd) to 915,000 bpd.²⁵⁴ The new route would snake its way across the state of Minnesota and cross territories referenced in a series of treaties between the Anishinaabe (Ojibwe) and the U.S. government, where Anishinaabe rights to hunt, fish, and gather were upheld by a 1999 Supreme Court decision.²⁵⁵

By 2017, six Ojibwe Bands (the Red Lake, White Earth, Fond du Lac, Leech Lake, Mille Lacs, and Bois Forte Bands) and Honor the Earth were raising concerns over the U.S. portion of the Line 3 replacement project.²⁵⁶ A fundamental concern, according to letters that the White Earth and Red Lake Bands sent to state officials, was “the failure of state government agencies to fairly recognize and respect our natural resource and other sovereign rights across northern Minnesota.”²⁵⁷ In related terms, the Indigenous resistance movement opposing Line 3 was intimately linked to Anishinaabe



Gichi-Gami Gathering to Stop Line 3, September 28, 2019.

COMMERCIAL OPERATIONS START YEAR:

2021

STATES ON PIPELINE ROUTE:

NORTH DAKOTA, MINNESOTA, WISCONSIN

PROJECT OWNER:

ENBRIDGE

struggles for off-reservation land management rights and the defense of their sacred wild rice from pollution, as well as the broader climate action movement.²⁵⁸ Underscoring pollution-related concerns, a Greenpeace USA report found that Enbridge and its subsidiaries had spilled 66,059 barrels of hazardous liquids from incidents that occurred, on average, once every 20 days between 2002 and 2018.²⁵⁹

As years passed, the movement opposing Line 3 grew and diversified. The Red Lake, White Earth, and Mille Lac Bands, along with environmental organizations, leveraged a variety of legal strategies to halt the project.²⁶⁰ Demonstrations were held across the state, and several resistance camps, including the Giniw Collective’s Namewag Camp, were founded along the pipeline route.²⁶¹


Minnesota’s government was supportive of Line 3, but sought to avoid the political mistakes made at Standing Rock. The state and Enbridge touted their support for protesters’ rights. But they also quietly used surveillance to monitor activism, hostile police tactics to clear civil disobedience, and narrative campaigns to turn public opinion against demonstrators. As a result, around 1,000 demonstrators were arrested for activities related to Line 3 protests between 2021 and 2022, and many were charged with trumped up charges.²⁶² Nevertheless, the movement opposed to the Line 3 pipeline endured for years, and fossil fuel industry-backed efforts to pass anti-protest legislation failed due to the considerable power held by Democrats in Minnesota state government and strong opposition from civil society groups.

Line 3 Timeline and Key Dates


Legal and
Legislation Action


Project
Milestones


Movement
Actions


Protest
Suppression



MARCH 2014

Enbridge announced its plans to replace and expand the Line 3 pipeline, targeting its completion in the second half of 2017.²⁶³



2017

In February 2017, Indigenous activists set up a frontline camp, Camp Makwa, on private land on the Fond du Lac reservation, which functioned as “a space for people to come together, to practice and protect our treaty rights and make sure that Line 3 does not get constructed.” Although permits were still pending in Minnesota, construction on Line 3 began in Wisconsin in August, drawing peaceful protests near the construction route.²⁶⁵



JUNE 2018

Minnesota’s Public Utilities Commission (PUC) granted approval for Enbridge’s proposed Line 3 route. The Mille Lacs, White Earth, and Red Lake Bands, along with Friends of the Headwaters and Honor the Earth, appealed the PUC’s decision to approve Line 3’s Environmental Impact Statement, setting off a years-long permitting dispute that would continue until August 2021.²⁶⁷



AUGUST 2015

Roughly 100 people turned out to a Line 3-related public hearing on the White Earth Indian Reservation, voicing significant concerns and opposition to the Line 3 replacement project.²⁶⁴



2017-2018

In July 2017, the Red Lake, White Earth, Fond du Lac, Leech Lake, and Mille Lacs Ojibwe Bands, along with Honor the Earth and a group of 13 Indigenous and non-Indigenous youth became official intervenors in the Line 3 permitting process. In October 2017 the same Bands, along with the Bois Forte Band, announced a sovereign Line 3 environmental review process, while continuing to participate in Minnesota’s process in parallel.²⁶⁶



NOVEMBER– DECEMBER 2020

Line 3 received its final permit approvals and began construction, despite continued opposition and pending challenges in state court.²⁶⁸



SPRING-SUMMER 2021

Increased urgency to slow Line 3 construction combined with the Spring thaw paved the way for a new phase of non-violent direct action. Protests crescendoed in late summer 2021 and met fierce suppression from law enforcement. Key events are detailed below.

- JUNE 7:** During the Indigenous-led Treaty People Gathering, a Border Patrol helicopter descended to a low level, kicking up dust and showering protesters with debris. Officials claimed that the helicopter was brought in to execute a dispersal order, but the announcement is inaudible to many protesters. By the end of the day, 186 demonstrators had been detained.²⁶⁹
- JUNE 28:** the Hubbard County Sheriff's Office informed Tara Houska, the founder of Giniw Collective, that they would be closing off and barricading access to their Namewag camp, which was located on private property used with permission and acquired in 2018 by Winona LaDuke. There were no illegal activities alleged to be occurring on the property. A judge later granted a temporary restraining order against Hubbard County authorities, barring them from interfering with access to the property.²⁷⁰
- JULY 30:** Water protectors were pepper sprayed and hit with rubber bullets after climbing a fence during their effort to prevent drilling under the Red River, a site that Houska said has particular significance to the Red Lake Nation and all Pembina Ojibwe Bands of the 1863 treaty signed with the United States.²⁷¹
- AUGUST 2021:** Over the course of several weeks, water protectors documented numerous incidents of pain compliance torture in response to efforts to prevent drilling under the Red River. These tactics, according to interviews with water protectors, included applying pressure to the face and jaw area that resulted in jaw dislocation and nerve damage causing face paralysis.²⁷²



SEPTEMBER 2021

Line 3 construction was completed.



OCTOBER 2022

Enbridge was ordered by the Minnesota Pollution Control Agency to pay \$11 million in settlements, environmental projects, and financial assurances due to water quality violations and aquifer breaches that occurred between June 8 and August 5, 2021, during Line 3 construction.²⁷³



SEPTEMBER 2023

District Court Judge Leslie Metzen dismissed all charges against three Indigenous women, Winona LaDuke, Tania Aubid, and Dawn Goodwin, who helped lead peaceful protests opposing Line 3 in 2021. In a powerful decision, Judge Metzen wrote: "To criminalize their behavior would be the crime."²⁷⁴

Fossil Fuels and the Political Landscape

Minnesota's Midstream Madness

Although Minnesota does not possess fossil fuel deposits, it is an essential fossil fuel gateway: nearly two-thirds of Canadian crude oil imports into the U.S. are transported through the state.²⁷⁵ Practically all of these imports flow through the Enbridge-owned Mainline System, which runs from the Alberta tar sands region to destinations in the Great Lakes region.²⁷⁶ And roughly one-sixth of these imports are processed at Minnesota's

Pine Bend Refinery, which is owned by Koch Industries subsidiary Flint Hills Resources.²⁷⁷ The refinery has been called a “cash cow” for the Koch Industries empire, serving as a key profit center from the 1960s to the present.²⁷⁸ According to 350 Minnesota, Koch Industries is the most powerful voice on climate and energy issues in the Minnesota Chamber of Commerce, a group that has opposed “nearly every pro-environment proposal and legislation over the past decade or more.”²⁷⁹

ANALYSIS: Line 3 Stakeholders and Pro-Line 3 Trade Groups Spent Over \$43 Million On Lobbying in Minnesota Between 2014 and 2021²⁸⁰

Enbridge, prospective Line 3 shippers, and pro-Line 3 trade groups spent a combined \$43,732,942 on lobbying in Minnesota from 2014 to 2021, the timeframe spanning Line 3's announcement through completion. Among these organizations, Enbridge and the Minnesota Chamber of Commerce were the top spenders. The company spent more than \$1 million on lobbying in Minnesota every year between 2014 and 2021. In 2018, it spent nearly \$11 million lobbying the Minnesota PUC—more than double all other entities combined.²⁸¹ The Minnesota Chamber of Commerce spent more than \$2 million annually on lobbying between 2016 and 2020.

Flint Hills, the Koch Industries subsidiary, spent more than \$4 million on lobbying between 2014 and 2021. In 2019, it was part of a group with Marathon Petroleum and other businesses that tried and failed to block a state-wide electric vehicles program.²⁸² Marathon Petroleum is the country's largest oil refiner, and was investigated by Congress the same year after a New York Times investigation found that it had worked with Koch-backed industry groups to “run a stealth campaign to roll back car emissions standards.”²⁸³

Enbridge Used Self-Serving Payments and Donations To Shore Up Support

Enbridge offered deals to the Red Lake Band of Chippewa and the Fond du Lac Band of Lake Superior Chippewa for their support in routing the pipeline through tribal lands.²⁸⁴ (Red Lake said no, and the Fond du Lac Band accepted.) “There has been an attempt [by Enbridge] to divide us, and to an extent it has,” Sam Strong, Red Lake's tribal secretary, told the Star Tribune. “It's very negative, and it is their playbook.” In addition to a jobs package working on Line 3, Enbridge's offer to Red Lake included more than \$1 million for community

projects, including \$500,000 to rebuild the tribe's Ponemah Pow Wow Grounds, and an offer to arrange a \$25 million solar energy project that would be partly owned by Red Lake. The Fond du Lac deal was not made public, but in January 2021, the band sent a letter to members saying this year's \$400 monthly per-capita payments would be made “using Enbridge funds.” In a 2017 deal, Enbridge offered payments totaling around \$60 million over 25 years to the Lac Courte Oreilles Band of Lake Superior Chippewa for a new long-term easement for two Enbridge pipelines.²⁸⁵

Corporations like Enbridge might use donations as a strategy to shore up support and protect their assets. Through its “Safe Communities” program that began in 2013, Enbridge provides monetary support to law enforcement and first responder organizations under the cover of philanthropy.²⁸⁶ In 2022, Enbridge touted spending \$100,000 in a carbon offset tree-planting program that it claimed would help landowners.²⁸⁷ But tar sands oil extraction has a direct and potentially irreparable impact on Canada’s boreal forests: between

2000 and 2014, the industry contributed to nearly two million acres of forest loss or degradation.²⁸⁸

As a condition for Line 3’s permit approval, Enbridge paid more than \$8.6 million into a state-managed escrow account that was used to fund the state’s response to pipeline protests.²⁸⁹ Further details of this arrangement are discussed in the “Sanctioning Hostile Policing” section below.

TACTIC #1 Pushing for Boosted Penalties For Protesters

After Line 3’s approval on November 30, 2020, many Indigenous water protectors and allied activists found themselves with no choice but to put their bodies on the line. There was an immediate upswing in protest and direct action around the state.²⁹⁰ Minnesota legislators opposed to the movement’s tactics would soon introduce a new batch of “critical infrastructure” bills. The bills bore similarities to ALEC’s model legislation but notably went even further. One bill, HF 129 (2021-2022), deemed the “Guilt-by-association anti-protest bill” by the ACLU of Minnesota, would have created civil and criminal liability for anyone who “intentionally recruits, trains, aids, advises, hires, counsels, or conspires with” someone to trespass.²⁹¹ In certain cases of property damage, the criminal penalties would have ranged up to \$20,000 and 10 years in prison. According to ICNL, “the broad language could be construed to include aiding a protester by providing them with water or medical assistance.”²⁹² Another of the bills, SF 355 (2021-2022), would have created a felony offense with penalties of up to three years in prison and \$5,000 in fines for trespassing on critical infrastructure in cases without actual property damage, but rather with the *intent* to “damage, destroy, or tamper with equipment, or significantly impede or inhibit operation.” Unlike similar legislation previously attempted in the state, these bills did not pass Minnesota’s House or Senate because of organized local opposition and the sponsors did not have the votes in the legislature. But, not to be dissuaded—and despite Line 3 becoming operational—two of the bill’s sponsors, Rep. Paul Novotny and Sen. Warren Limmer, tried again in the 2023-24 session.

2021 was not Minnesota’s first brush with anti-protest legislation. Four critical infrastructure bills were introduced in the 2017-2018 and 2019-2020 sessions. Only the first bill, SF 3463 (2017-2018), passed both the House and Senate, which were controlled by Republicans at the time, but was vetoed by then-Governor Mark Dayton.²⁹³ In a study of these earlier bills, the Institute for Policy Studies (IPS) notes that Pat Garofalo, one of the sponsors of the first bill, was the ALEC State Chair for Minnesota.²⁹⁴ IPS found that other bill sponsors had received political donations from Enbridge-connected lobbyists, Dorsey & Whitney LLP—a law firm representing parties that testified in favor of Line 3—the Northwest Petroleum PAC, and the Flint Hills Refinery PAC.²⁹⁵ Representative Matt Grossell, who has cosponsored six anti-protest bills since 2017, claimed that the Line 3 pipeline was “under attack by eco-terrorists.”²⁹⁶

Minnesota does not require lobbyists to disclose positions taken on specific bills, but several are known to have testified in favor of anti-protest bills in legislative committee hearings, including lobbyists for the Minnesota Chamber of Commerce (2018) and Marathon Petroleum (2019 and 2020).²⁹⁷ Moreover, Enbridge and prospective Line 3 shippers Marathon Petroleum and Koch Industries are among the top five companies that have directed the most resources to lobbying for fossil fuel anti-protest legislation across the country (as described in the country-wide ranking in this report’s Introduction).

TACTIC #2. Using Public Relations and Astroturfing to Shift Public Opinion

The construction of Line 3 benefited from a wide range of public relations tactics that appeared to be intended to distract Minnesotans from the environmental and anti-Indigenous issues at hand through openly hostile rhetoric or veiled messaging. Enbridge worked with PR front groups to generate support for Line 3. According to the Canadian climate change media outlet, DeSmog:

“Minnesotans for Line 3, a group established last year to advocate for an Enbridge oil pipeline project, presents itself as a grassroots organization consisting of “thousands of members.” But a DeSmog investigation has found that behind the scenes, the Calgary-based energy giant is pulling the strings. Enbridge has provided the group with funding, public relations, and a variety of advocacy tactics. The investigation has also found that a public relations firm behind the operation recently tried to erase its ties to Enbridge.”²⁹⁸

The group’s spending was so high that they ranked as the tenth largest Facebook ad purchaser among special interest groups between November 2018 and April 2019.

Its Facebook campaign likely produced more than 20 million impressions.²⁹⁹ Three Enbridge executives were listed on the filings for Minnesotans for Line 3 TV ads and one of the ads was placed by Velocity Public Affairs, a group whose principal represented Enbridge as a lobbyist for years, according to DeSmog’s investigation.

Even without resorting to the level of vitriol that became so prevalent in North Dakota, Minnesotans for Line 3 portrayed activists and water protectors as outsiders with backward values, ignoring the fact that Indigenous water protectors at the forefront of the movement have long-standing ties, predating European colonialism, to the land, water, and wild rice that is threatened by Enbridge.³⁰⁰

The “Respect Minnesota” campaign used similar appeals to politeness to nudge potential sympathizers away from the Line 3 opposition movement. The tagline was trademarked by Velocity Public Affairs in 2019, the same company listed behind a Minnesotans for Line 3 ad.³⁰¹ In 2017, the Consumer Energy Alliance (CEA), a fossil fuel-funded astroturfing group, created a campaign titled “Modernizing America” that ran two TV ads in Minnesota in support of the pipeline.³⁰² CEA’s member groups include Koch and Enbridge, although its website depicts the CEA as a consumer group advocating for “working families, seniors, and small businesses.”³⁰³



Line 3 Petition To Governor Walz in Minnesota, June 6, 2019.

TACTIC #3. Sanctioning Hostile Policing

Public-Private Security Coordination and Protester Surveillance

In a series of articles for the Intercept, Alleen Brown and Will Parish revealed years of close coordination between Enbridge's security forces and state and local law enforcement in Minnesota and Wisconsin to prepare for and respond to Line 3 protests. In 2017, as protesters were arrested in Wisconsin for delaying construction, the Douglas County Sheriff's Office was in regular contact with Raven Executive and Security Services and Securitas, two private contractors hired by Enbridge. Law enforcement agents in Wisconsin and Minnesota, and Enbridge's hired security contractors, circulated and exchanged information about the pipeline opposition movement and specific activists, such as Winona LaDuke.³⁰⁴

Public-private security coordination intensified in the year and a half leading up to Line 3's construction phase in Minnesota.³⁰⁵ In 2020, more than a dozen Enbridge employees participated in joint training sessions with an FBI agent and local sheriffs along the pipeline route. Law enforcement agents from the so-called "Northern Lights Taskforce"—a Minnesota group of sheriffs and public safety officials—sometimes requested Enbridge's intelligence support and participation in meetings. Law enforcement also shared information with Enbridge including, in one known case, the attendee list for an anti-pipeline organizing meeting. As construction started in late 2020, these public-private meetings were occurring daily.³⁰⁶ Drones and ground vehicles, some belonging to private security, were used to monitor activism, but exact details of the surveillance operation remain unclear because, in August 2021, the agency responsible for the Minnesota Fusion Center enacted an unprecedented policy that barred the release of Line 3-related records that would detail law enforcement's use of surveillance, among other tactics.³⁰⁷

Forceful Tactics to Suppress Protest

Law enforcement used mass arrests and increasingly forceful tactics to suppress the Line 3 protests. As detailed in the timeline of this section, demonstrators reported enduring low-flying helicopters, rubber bullets, pepper spray, and pain compliance torture between June and August 2021 while opposing pipeline construction. These protest-suppressing tactics were dangerous. In 2020, the previous year, low-flying helicopters were used to intimidate Black Lives Matter protesters in Washington D.C., in a widely-publicized incident that led to disciplinary action against a number of the individuals involved.³⁰⁸ Christopher Harmer, a veteran military helicopter pilot and writer for the Drive, called the tactic a "show of force" that endangers both protesters on the ground and the flight crew.³⁰⁹ Rubber bullets used against protesters in other instances have caused serious injury or death. Moreover, after being arrested, some demonstrators reported mistreatment from officers such as lack of proper food, solitary confinement, and denial of medications.³¹⁰

Minnesota state and local law enforcement may have picked up some of their tactics from the police response to the Standing Rock protests. In 2017 and 2018, local law enforcement participated in a training session from the former Disaster Recovery Chief for the North Dakota Department of Emergency Services and three training sessions from members of the Cass County Sheriff's Office.³¹¹ In December 2020, the intelligence coordinator for the Minnesota Department of Public Safety sent out a Standing Rock After-Action Report from the North Dakota Department of Emergency Services, calling it "the best document I've read in 10 years of working for the state!"³¹² According to Alleen Brown, the report contained "not a lot of reflection, actually, around the use of tactics like water hoses in below-freezing weather. There was more reflection on how to better utilize drone footage, or how to win information battles. So I don't know that the lessons learned were that violent tactics need to be avoided. But it was more like: How do we look better?"³¹³

Sponsored By Enbridge

Dozens of agencies who responded to the Line 3 protests were reimbursed for wages, planning costs, equipment, and other expenses using Enbridge funds via a state-managed escrow account. The financial arrangement may have encouraged law enforcement agencies to invest more aggressively in their suppressive and overly-broad protest response. These concerns are backed up by spending totals that were calculated by reporters from Grist and the Center for Media and Democracy using public records.³¹⁴

The Enbridge-funded escrow account was used to pay for wages and overtime for public officials to attend Northern Lights Taskforce meetings, which also involved Line 3 security personnel. Moreover, the account was used to reimburse \$700,000 worth of riot gear purchases, including over \$260,000 worth of gas masks and attachments.

Through the escrow account, Enbridge funds were used to reimburse over \$79,000 worth of expenses accrued in just one day: June 7, 2021, the day protesters were showered with debris caused by a low-flying helicopter. The Enbridge-funded account was also used to reimburse “proactive” safety patrols, which may have been used to surveil water protectors and demonstrate an intimidating police presence along the pipeline route. Police and sheriffs’ offices overall received at least \$5.8 million funds from the account. Another \$2.17 million went to the Minnesota Department of Natural Resources.

Spending totals also reveal the troubling incidence of pipeline-related human trafficking and sexual violence. Nearly a quarter of a million dollars were paid to state agencies and nonprofits responding to these issues. At least four Line 3 workers were reportedly arrested in sex trafficking stings.³¹⁵

Around 1,000 water protectors were arrested for Line 3 protest-related activities between 2021 and 2022. Over 700 faced criminal charges for their protests, and nearly 100 were threatened with felony charges.³¹⁶ In November of 2021, Honor the Earth launched the Drop the Charges campaign asking politicians to support dismissing the charges against water protectors who fought for the environment and in defense of treaty rights. The campaign cited “dozens of highly questionable felonies” such as “attempted assisted suicide” for demonstrators who entered empty pipes during a non-violent blockade.³¹⁷ Threatening protesters with such felonies can be a retaliation tactic intended to stifle dissent. In 2023, all of the remaining charges against three Indigenous women leaders, including Winona LaDuke, were dropped by District Court Judge Leslie Metzen.

Metzen wrote in her decision:

*In the interests of justice the charges against these three individuals who were exercising their rights to free speech and to freely express their spiritual beliefs should be dismissed. To criminalize their behavior would be the crime.*³¹⁸



Enbridge's Line 3 Expansion in Canada, September 15, 2016.

2023 AND THE ROAD AHEAD

The world has witnessed a worrisome decline of democracy.³¹⁹ This has direct implications on forestalling the climate crisis, since one of the formidable challenges to keeping global greenhouse gas emissions within Paris-aligned targets is making governments act to halt and reverse the expansion of one of the world's most powerful industries. Indeed, many countries with the largest remaining fossil fuel reserves are governed by autocratic regimes whose power is heavily if not entirely dependent on continued fossil fuel production.³²⁰ In such contexts, protest and dissent are often met with brutally oppressive force.

The reality of this global situation also means that those who live in countries with robust civil societies, global influence, and abundant fossil fuel reserves must take on greater global responsibility for phasing out fossil fuels and protecting human rights. Many of us, especially those of us living in the U.S., bear the additional responsibility of living in a society whose relative affluence (for many) was built upon a disproportionate contribution to the blanket of atmospheric carbon that poses existential threats to human wellbeing and a healthy planet.³²¹

Yet the U.S. is not immune from threats to democracy, despite possessing legal and political accountability mechanisms that set it apart from autocracies. To the contrary, recent events—ranging from the continued spread of anti-protest laws to the police response to Stop Cop City protests—have severely undermined the right to free speech, a fundamental principle of American democracy. What ties many of the examples in this report together is a dangerous pattern of escalation whereby activists—and nonactivists exercising their

right to dissent—are treated as criminals and extremists, a pattern that the fossil fuel industry has promoted. The examples throughout this report also demonstrate how the very potency of the U.S. legal system has resulted in a situation where undemocratic actors often seek to capture and exploit it. Our legal system should protect all of us, but fossil fuel companies have sought to weaken or control it for private gain.

The combination of rhetorical attacks, protest criminalization, and hostile law enforcement toward protesters has continued into 2023. This section continues below with an overview of anti-protest laws that have been enacted in 2023 and a review of how counterterrorism powers have been weaponized to suppress protest opposing the construction of the Atlanta Public Safety Training Center popularly known as “Cop City.” It concludes with an overview of the growing use of costly lawsuits and anti-protest laws to criminalize dissent around the world.

Overview of 2023 Anti-Protest Bills

So far in 2023, 23 anti-protest bills have been introduced in 15 states.³²² Out of these, six bills in five states have been enacted into law.³²³

Four States Have Enacted Fossil Fuel Anti-Protest Laws

The fossil fuel and energy industries, and ALEC, have continued to advocate for fossil fuel anti-protest laws.³²⁴ Four such laws have been enacted so far in 2023, including three with narrowed provisions.

Between January and February, lawmakers in North Carolina, Utah, and Oregon introduced sweeping fossil fuel anti-protest bills with draconian penalties for trespassing upon, impeding, and/or disrupting energy infrastructure. However, the bills in each of these states, except North Carolina, were substantially narrowed during the legislative process. In Georgia, lawmakers introduced a narrowed version of fossil fuel anti-protest legislation by substitute, which was enacted with only minor amendments. Each law is summarized below:

- North Carolina's enacted law (S 58) is particularly extreme. It carries felony penalties with up to 19 years imprisonment and \$250,000 in fines for attempting to "obstruct, impede, or impair the services of transmissions of an energy facility."³²⁵ Under the new law, trespassing on energy facilities is also classified as a felony with up to two years in prison. The bill was primarily sponsored by Sen. Paul Newton, who worked at Duke Energy for 25 years and was the company's state president.³²⁶
- Georgia's enacted law (HB 227) carries felony penalties with between two and 20 years imprisonment for interfering "by either force or violence or by electronic means [...] with the proper operation of any critical infrastructure."³²⁷ The law also carries a misdemeanor penalty for the vague offense of "interfer[ing] with the proper action of a company, municipality, or political subdivision owning critical infrastructure." The bill was supported by lobbyists for the Georgia Chamber of Commerce and Georgia Power, a Southern Company subsidiary.³²⁸ Members of the Georgia Chamber of Commerce include Koch Industries, Marathon Petroleum, Georgia Power, and NextEra.

- As introduced, Utah's anti-protest bill (HB 370) would have made "inhibiting or impeding the operation of a critical infrastructure facility" a first degree felony punishable by five years to life in prison.³²⁹ The amended and enacted version criminalizes such conduct only if doing so causes "widespread injury or damage to persons or property." The original version of the bill had a very broad definition of critical infrastructure that included highways, bridges, and transportation systems, but these were removed in the enacted version. Energy industry lobbyists supported the bill before it was narrowed, including Dominion Energy and Rocky Mountain Power.³³⁰
- As introduced, Oregon's anti-protest bill (HB 2772) would have created a domestic terrorism crime for attempting to cause "disruption of daily life" that "severely affects the population, infrastructure, environment, or government function of the state."³³¹ The amended and enacted version creates a domestic terrorism crime for attempting to destroy or substantially damage critical infrastructure, including pipelines and roads, with the intent to cause the widespread disruption of services provided by such infrastructure. No private sector interest groups testified in favor of the bill, so it is unclear who supported it.

Although the narrowed laws enacted in Utah, Oregon, and Georgia use language that appears to preclude peaceful protest, they could still open the door for aggressive prosecutorial tactics intended to punish peaceful protest. For example, protesters obstructing the expansion of a gas pipeline could be charged under Georgia's law if the prosecutor interprets their activity as interfering "by force" in the pipeline's proper operation. Likewise, protesters could be charged under Oregon's law if the prosecutor deems that the protesters attempted to substantially damage the pipeline with "intent" to cause widespread disruption of services. According to Jessica Maravilla, policy director from the ACLU of Oregon, Oregon's new law "targets conduct that was already criminal, and adds a stigmatizing label and vague language that could enable law enforcement to mischaracterize protest actions as terrorist activity."³³²

The newest purported justification for these bills is that they are needed to deter electricity substation attacks.³³³



Black Lives Matter Protest in Washington D.C., June 6, 2020.

Such crimes, however, are already punishable under laws that are less susceptible to abuse and that do not threaten to chill protest.

Versions of fossil fuel anti-protest bills were also introduced, but have not been enacted into law, in Idaho, Illinois, and Minnesota. Idaho's bills, like the original version of Utah HB 370, would include bridges, highways, and other transportation infrastructure in its definition of critical infrastructure.³³⁴

New Laws Undermine Local Governance and Threaten Free Speech in the Majority-Black City of Jackson, Mississippi After Decades of Neglected Infrastructure Left Thousands Without Water

Two 2023 Mississippi laws (HB 1020 and SB 2343) create a “separate and unequal” policing and court structure in the majority-Black city of Jackson, according to a lawsuit filed by the NAACP, after a massive water system failure left thousands of residents without drinking water for a month.³³⁵ These laws were introduced after community groups, working with the city, started planning for resident engagement initiatives and a “just and equitable 21st-century water system.”³³⁶ The laws contain an arsenal of measures, which include expanding the Capitol Complex Improvement District to bring the entire city of Jackson under control of the state-run Capitol Police (SB 2343) and creating a new court system for the district whose judge would be appointed by the state instead of elected by voters (HB 2010).³³⁷ HB 2010 was called a “racist, unconstitutional

power grab” by the House Democratic Caucus, and it was successfully blocked by a Mississippi Supreme Court ruling on September 21.³³⁸

At the same time, SB 2343 prohibits Jackson residents from engaging in peaceful protests near the Mississippi state house and other government buildings without express permission from state officials.³³⁹ The provision is so sweeping that it applies to sidewalks immediately adjacent to government buildings, as well as streets and other locations that could “hinder ingress” to such buildings, and does not include a minimum number of protesters.

North Carolina Has Enacted Heightened Penalties For Activities Defined As “Rioting”

According to the ACLU of North Carolina, a 2023 North Carolina law (HB 40) “increases criminal penalties for protesting and makes protestors liable for substantial civil damages to individuals harmed by a protest, even where a protestor only verbally encouraged activities defined as “rioting” and did not take any individual actions to cause injury or damage.”³⁴⁰ HB 40 became law in March without Gov. Cooper’s signature due to the supermajority held by Republicans and at least one Democrat who supported the bill, which would have likely overrode a veto.³⁴¹ A similar bill, HB 805 (2021), was introduced after the 2020 wave of Black Lives Matter protests and vetoed by Gov. Cooper. At the time, Cooper wrote in a statement about the veto: “[...] this legislation is unnecessary and is intended to intimidate and deter people from exercising their constitutional rights to peacefully protest.”³⁴²

Terrorism Charges May Pose a Continued and Increasing Threat to Activists

Federal and state officials have repeatedly weaponized counterterrorism powers to suppress dissent. Doing so can punish non-violent activists for their views and protect polluting interests. Among the most recent targets of counterterrorism tactics have been activists who oppose the construction of the Atlanta Public Safety Training Center.

Many Atlanta residents view the training center as a manifestation of police violence, racism, and environmental injustice.³⁴³ Its construction requires razing one of Atlanta's last remaining swaths of forest in a predominantly Black neighborhood.³⁴⁴ Upon the facility's completion, it could draw police forces from around the country for active shooter simulations and other training sessions.³⁴⁵ A small minority of demonstrators are alleged to have damaged property, but the overwhelming majority have not.

Nevertheless, Georgia authorities have clamped down upon protesters with authoritarian force. During a forest raid in January 2023, police fatally shot the protester Manuel Esteban Paez Terán 57 times.³⁴⁶ The Georgia Bureau of Law Enforcement has said that Terán fired at law enforcement first, but evidence from DeKalb County's official autopsy and body camera footage raises questions about the official account.³⁴⁷

In early 2023, police swept up more than 40 people in a pattern of seemingly indiscriminate and politically-motivated "terrorism" arrests.³⁴⁸ As noted by the ACLU, "[t]he 'Stop Cop City' defendants are not accused of injuring, or even attempting to injure, anyone at all. At most, they are accused of damaging property, and some defendants appear to be accused of no more than misdemeanor trespass."³⁴⁹ The charges were made possible by a 2017 Georgia law that categorizes actions that disable or destroy so-called critical infrastructure as domestic terrorism.³⁵⁰

Police have also raided two charities, the Lakewood Environmental Arts Foundation, which has been operating community food drives since 2014, and the Atlanta Solidarity Fund, which was founded in 2016 to raise money to pay protesters' bail.³⁵¹ Atlanta police justified the SWAT raids as a response to alleged "money laundering" and "charity fraud", but they have been widely viewed as political persecution.³⁵² Soon after the Atlanta Solidarity Fund raid, leaked audio surfaced of police allegedly suggesting that the arrests were politically-timed and intended to "send a message."³⁵³

Georgia authorities escalated their sweeping assault on protest and dissent once more in September 2023, when state Attorney General Chris Carr indicted more than 60 individuals—including organizers from the Atlanta Solidarity Fund—on RICO charges.³⁵⁴ These charges dangerously, and absurdly, mischaracterize anyone who showed opposition to the training center as part of a criminal enterprise. The indictment characterizes First Amendment-protected activities, such as writing "ACAB" and making zines, as "overt acts in furtherance of the racketeering conspiracy." According to Lauren Regan, executive director of the Civil Liberties Defense Center, the indictment is "clearly intended to chill larger political participation."³⁵⁵

While it's been state and local officials carrying out the "Stop Cop City" arrests, protest suppression disguised as counterterrorism is a country-wide issue. DHS shared intelligence reports with Atlanta Law Enforcement, including one that referred to protesters as "militants" comprising a "violent far-left occupation" several months before the first domestic terrorism charges were filed.³⁵⁶ And, in 2020, DHS took steps to "undermine the Black Lives Matter movement and spin an election-season story of anarchy," according to the Brennan Center.³⁵⁷ Even the department's own general counsel and inspector general concluded that DHS officials have abused their counterterrorism power to suppress protest.³⁵⁸

The extreme police reaction to the Cop City protests reflects a disturbing country-wide trend of militarized policing against peaceful protest.³⁵⁹ The influx of battlefield equipment and tactics to police departments foments potentially deadly violence, as well as framing demonstrators as "opponents" that should be forcibly suppressed and whose concerns are illegitimate.³⁶⁰ The rhetorical framing of activists as domestic terrorists and extremists also contributes to an environment where protesters are more likely to be met with force.³⁶¹

Growing Protest Criminalization Around the World

Around the world, those who seek to protect the environment face a barrage of threats ranging from online harassment to brutal attacks. At least 1,390 land and environmental defenders have been murdered since the adoption of the Paris Agreement on December 15, 2015.³⁶² Ending this tragic and unequal pattern of violence is essential.

Less lethal affronts to activism can still have profoundly negative effects. As a result of criminalization and judicial harassment (such as SLAPPs), individuals can be saddled with legal fees, prevented from earning a stable living, socially stigmatized, and displaced. Organizations can be bankrupted, ruptured, or forcibly dissolved. Criminalization and judicial harassment also threaten to chill free speech and dissent. Such fundamental rights are becoming ever more essential, as it becomes increasingly urgent to confront governments and private corporations about their inaction in the face of the ever-worsening climate crisis.

There is evidence of worsening protest criminalization in many parts of the world.³⁶³ Although there are many differences in the ways that governments criminalize protest, the framing of activists as terrorists or extremists who threaten a country's development is a common trend.³⁶⁴ Another similarity is the misuse and abuse of counterterrorism frameworks.³⁶⁵ Two notable examples of this pattern are Mohad Gasmi, an Algerian activist who joined the anti-shale gas drilling movement in 2015, and Disha Ravi, an Indian youth climate activist. Gasmi was sentenced to five years imprisonment for “praising terrorism” in October 2021, after 490 days’ detainment, and additionally sentenced to three years imprisonment in April 2022.³⁶⁶ Ravi was arrested under a sedition law in February 2021 for distributing a Google Doc “tool kit” intended to support the Indian farmers’ protests.³⁶⁷ She was detained for ten days and released on bail.³⁶⁸

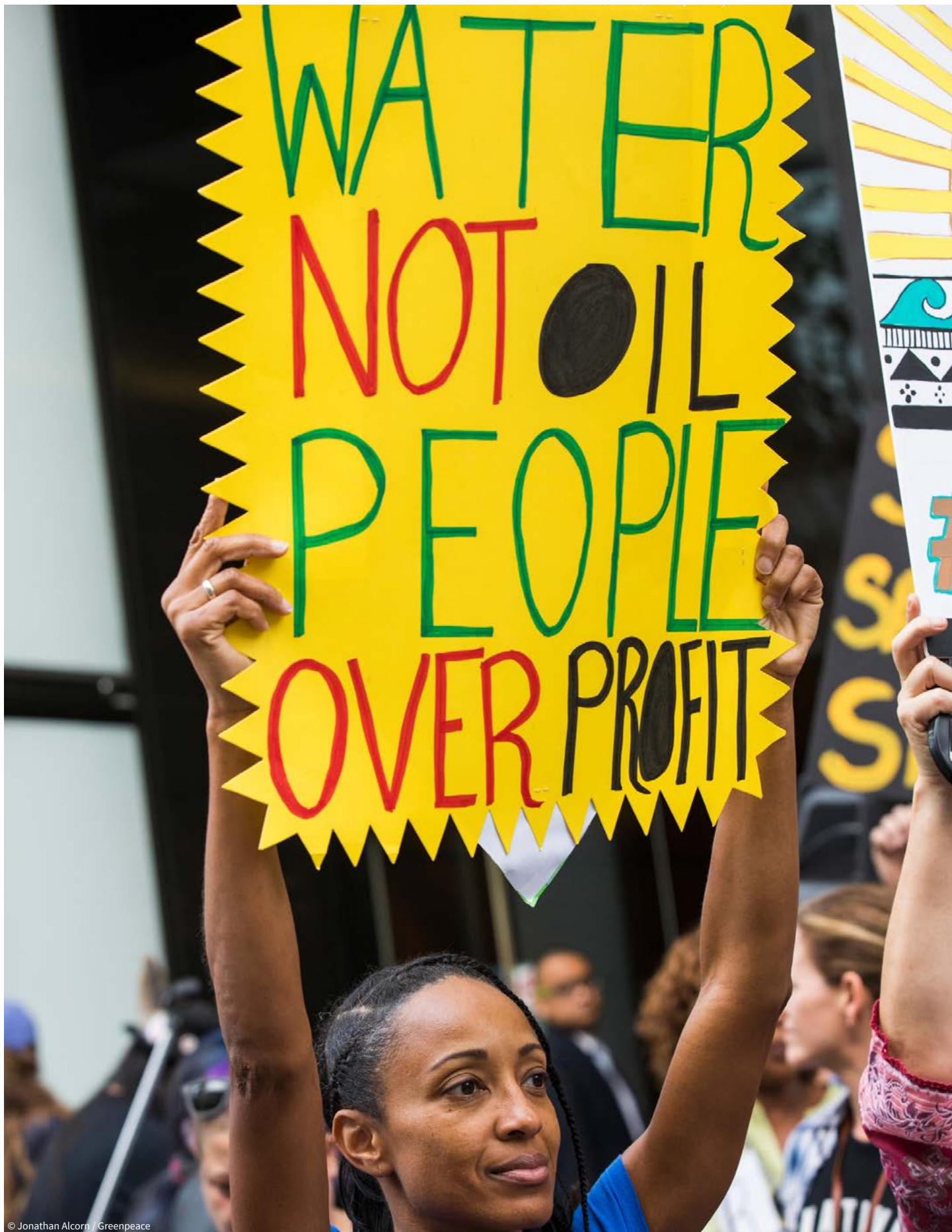
The fossil fuel industry and its allies have contributed to a worldwide spread of fossil fuel anti-protest laws. In 2022, the UK government enacted a law intended to target Extinction Rebellion protests that was drafted by Policy Exchange, a British think tank funded by Exxon and other oil and energy companies.³⁶⁹ Policy Exchange is one of more than 500 member think tanks in nearly one hundred countries belonging to the Atlas

Network, an influential global network that has spent decades pushing for environmental activists to be viewed and treated like extremist criminals.³⁷⁰ State governments across Australia have passed anti-protest laws that target climate and environmental protesters.³⁷¹ Days before the most recent law was passed in South Australia, the state mining and energy minister, Tom Koutsantonis, told the audience at a gas conference that the state government was “at your disposal.”³⁷² Alberta, Canada enacted a law officially known as the “Critical Infrastructure Defense Act” in 2020 that was widely viewed as a response to Indigenous-led peaceful protests opposing the Coastal Gaslink Pipeline.³⁷³

Deep-pocketed corporations often weaponize the court system by using SLAPPs to silence their critics. More than 400 such lawsuits have been recorded by the Business and Human Rights Resource Center since January 2015, with the highest number of cases occurring in Latin America, followed by Asia and the Pacific.³⁷⁴ These suits may carry the potential for enormous damages. But regardless of whether the plaintiff wins or loses, defendants targeted for SLAPPs almost always incur significant costs.

A broad coalition has begun organizing to defeat the SLAPP strategy. Environmental groups, human rights groups, legal experts, professional societies (especially journalists), and progressive business groups all have a stake in this issue—and many have been fighting against SLAPPs for years. In the U.S., the Protect the Protest coalition is fighting back against SLAPPs and offering support to those who have been targeted by SLAPPs. Similar coalitions have formed in Europe and Africa.³⁷⁵

Some governments have begun taking action. Responding to reports documenting the intensifying pattern of legal threats against investigative journalists and civil society organizations, for instance, the U.S. government (USAID) helped launch Reporters Shield in 2022, a program to provide training, resources and assistance to help reporters and news and other organizations respond to legal threats.³⁷⁶ Strong anti-SLAPP laws are an even better solution. In the U.S., 33 states have some degree of anti-SLAPP protection under the law, but many are not as strong as they need to be.



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Dakota Access Pipeline Day of Action in Los Angeles, November 15, 2016.

POLICY RECOMMENDATIONS

None of the U.S.'s greatest social and political gains, or its greatest advancements in public health and environmental protection, have come about without a struggle. Indeed, this recognition is what led to the creation of Greenpeace 52 years ago by a small group of activists who sought to defeat the existential threat of nuclear annihilation.

Today, the fossil fuel industry's intensified efforts to suppress free speech stand in the way of a livable future for billions of people and countless species at risk of extinction this century.³⁷⁷ Activists and water protectors who have stood firm against this hulking industry have too often been met with violent reprisals, criminal penalties, stigmatization, and iron-handed legal actions. However insurmountable these obstacles might seem, it is still possible—and, indeed, essential—to reclaim popular protest and dissent for the long-held purpose of holding the U.S. government accountable to its own promise of delivering democracy and security to all Americans.

The following policies are necessary to reverse the deterioration of civic space and advance the movement for a healthy, socially just, and fossil-free future.

Take back our right to protest and dissent.

- Pass anti-SLAPP laws on the state and federal level aimed at protecting the rights of individuals to speak truth to power and be free from threats of burdensome lawsuits from corporations.³⁷⁸
- Pass local, state, and federal resolutions affirming all Americans' right to protest, free from threats of invasive surveillance, and physical and legal aggression.³⁷⁹
- Challenge and repeal anti-protest laws, including fossil fuel anti-protest laws that boost penalties for protest-related activities near pipelines and other polluting infrastructure.³⁸⁰ Challenge the overbroad use of RICO against protesters and their supporters, which dangerously conflates dissent with organized crime.

Reaffirm Indigenous sovereignty and provide redress for human rights violations.

- Federal, state, and local governments should honor historical treaties with Tribal Nations.
- Institutionalize free, prior, and informed consent to require the consent of American Indian and Alaska Native tribes and Indigenous peoples regarding all governments' actions affecting their lands, livelihoods, culture, and spirituality.
- Governments should provide redress for violating the rights of all affected Tribal Nations as outlined in the UN Declaration on the Rights of Indigenous Peoples.³⁸¹

Strengthen the rights of communities to defend themselves against the harms of the fossil fuel industry.

- Advance climate and environmental justice through steps that include passing the Environmental Justice for All Act, which strengthens consultation with impacted communities, provides legal remedies to civilians, and expands environmental justice resources; and passing the Climate Equity Act, which elevates climate justice to the highest level of governance.³⁸²
- End the use of Nationwide Permit 12 to permit oil and gas infrastructure without robust opportunities for community input.
- Phase out fossil fuel production through steps that include: banning new fossil fuel leasing and permitting on public lands and waters, and phasing out existing leases; strengthening "polluter pays" requirements to ensure fossil fuel corporations pay the full cost of remediation; and establishing one-mile public health and safety buffer zones to prohibit oil and gas production near where people live, work, play, and learn.³⁸³

Prevent law enforcement from serving the interests of the fossil fuel industry over the interests of the general public.

- End the use of sweeping intelligence-gathering practices that target activism and dissent under the cover of domestic terrorism prevention.³⁸⁴
 - + Implement minimization procedures that prevent the intentional collection, retention, and dissemination of private information when there is no reasonable indication of criminal activity; require that federal funds allocated to state and local law enforcement not be used for monitoring First Amendment-protected activities in the context of activism and dissent; and staunch the free flow of data exchanged between fusion centers and the private sector.
 - + Investigate potential violations of constitutional rights of activists and civil society organizations by law enforcement authorities, private sector

representatives, and others in and apart from fusion center operations and related communications.³⁸⁵

- Prohibit law enforcement authorities from participating in arrangements that open the door to conflicts of interest through steps that include: passing state and federal laws regulating private employment for off-duty law enforcement; and prohibiting law enforcement authorities from accepting reimbursements or donations from the fossil fuel industry.³⁸⁶
- Pass state and federal laws banning the use of injury-prone tactics such as pain compliance, chemical agents, blunt-force weapons, and kettling against peaceful protesters.³⁸⁷

Help us fight for a Green Democracy!

- Stay connected with [Greenpeace USA's Democracy Campaign](#) for opportunities to take action.



Thousands Rally in Support of Native Nation in Washington D.C., March 10, 2017.

ENDNOTES

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Environmental Leaders Protest Schumer/Manchin Permit Deal in Washington D.C., March 10, 2017.

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