

CRITICAL INFRASTRUCTURE LAWS A THREAT TO PROTEST & THE PLANET

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REPORT FOR STANFORD EARTH SYSTEMS PROGRAM




Critical Infrastructure Laws

A Threat to Protest & the Planet

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Part 1: Why Protest a Pipeline

On a chilly fall day, police and private security released [attack dogs and water cannons](#) on a group of protesters. The year was 2016, not 1963. That fall, thousands of protesters camped with members of the Standing Rock Lakota Sioux Tribe to peacefully demonstrate against construction of the Dakota Access Pipeline (DAPL) on traditional Sioux land.

The Standing Rock Sioux and other protestors understood that human flourishing relies on healthy relationships with each other and the environment. So long as DAPL construction continued, those relationships were at risk. The North Dakota government let an oil company [trample on the rights](#) of protesters and the Standing Rock Tribe they sought to protect. DAPL also threatens the environment by contributing to problems like water contamination and human-caused climate change.

In the face of harmful policies, the U.S. constitution guarantees ordinary people the right to protest. This type of nonviolent resistance has a long history of unmasking violent power structures – and transforming them. The protesters at Standing Rock exposed how fossil fuel companies and even many elected leaders choose profit over human health and dignity. They endured physical attacks and won a temporary cessation of DAPL construction.

However, this victory for Indigenous rights and environmental health unleashed a series of attacks against the right to protest itself. Since DAPL construction temporarily halted in late 2016, state legislatures have been enacting “critical infrastructure” laws: legislation designed to intimidate protesters and quell opposition to pipeline construction.



Indigenous-led movements have opposed twenty-six major fossil fuel infrastructure projects across the United States and Canada in recent years ([Indigenous Environmental Network and Oil Change International](#), 2021).

This report will explore how these critical infrastructure laws criminalize protests and how they have proliferated across US states. This first part addresses what is at stake: Why would so many people risk arrest and injury to protest a pipeline in the first place?

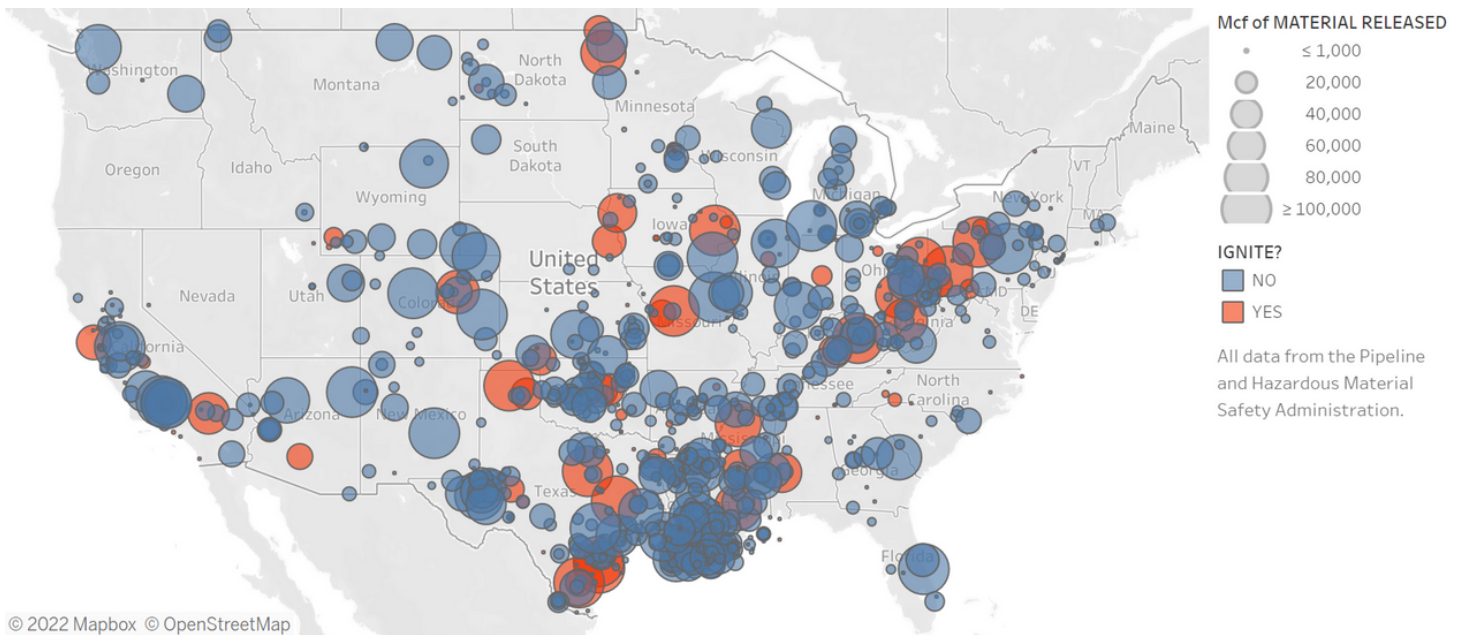
The Problem with Pipelines

Indigenous communities have been at the forefront of pipeline protest movements across the U.S. and Canada. Their campaigns

often center on stewardship: we must live in a way that respects the land and ensures people can thrive on earth for seven generations in the future. Undermining these values, pipelines threaten to contaminate soil and water through leaks and oil spills. Pipelines also threaten the seventh generation – and current generations – by creating incentives to extract and burn fossil fuels. Because of this, many Indigenous communities have voiced their right of self-determination to prevent

pipeline projects from cutting through their territory.

As the United Nations [declared](#), governments must receive “free, prior, and informed consent” from Indigenous peoples before starting projects that could affect them or their territories. Recognizing this right, many allies have joined the just fight of Indigenous communities to protect water and future generations from the impact of pipelines.



Fossil gas transmission system incidents in the United States, 2010-2017 (Thompson, 2021).

Leaky Pipes and the Threat to Clean Water

Leakage is an unavoidable consequence of transporting oil and fossil gas. One [analysis](#) found that, from 2010 to 2017, long-distance fossil gas pipelines leaked over 17 billion cubic feet of gas – enough to heat more than 200,000 homes for a year. Unfortunately, leaky pipes affect more than company profits. Both gas and oil leaks threaten human health. During the same eight-year period, [data](#) from the federal Pipeline and Hazardous Materials Safety Administration indicate that leaks in fossil gas pipelines killed or injured nearly 600 people.

[Leaks in oil pipelines](#) cause similar levels of casualties – averaging 85 injuries and 18 deaths per year from 1986 to 2016. However, leaky oil pipelines have caused even greater concern due to water contamination. One of the biggest spills

happened in Michigan. Energy company Enbridge built the Line 6B pipeline across southern Michigan in 1969, but few residents noticed it until 2010. That year on July 25, Line 6B ruptured, and an estimated [1.18 million gallons of crude oil](#) poured into the Kalamazoo River. It coated animals and shorelines forty miles downriver and contaminated over 4000 acres of land before workers were able to stop the flow.

The type of oil involved made the spill even more harmful. Line 6B carried diluted bitumen from Canada’s tar sands. [Raw bitumen](#) is heavy, sticky, and more viscous than peanut butter. To help it flow through pipelines, oil producers mix it with lighter compounds called “dilutents.” The result is diluted bitumen, or “dilbit.” Dilbit facilitates transport of tar sands oil, but at a [cost to public health and safety](#). Dilutents often include benzene, a cancer-causing compound. When dilbit spills out of a pipeline, those carcinogenic dilutents

evaporate into the surrounding air. The mixture left behind becomes denser than water, so it sinks.

That's what happened with the Line 6B spill: the diluents evaporated, and thick oil sludge coated the bottom of the Kalamazoo River. Dredging that sludge from the riverbed took five years and cost Enbridge [over \\$2.9 billion in cleanup costs](#) and fees. By that time, some riverside residents and businesses had permanently relocated. The Line 6B oil spill made it clear that a pipeline rupture lasting hours can ruin a river for years.

Since Enbridge's spill in the Kalamazoo River, high-profile pipeline protest movements have often emphasized the basic human need for clean water. Starting in 2011, the threat of pipeline leakage motivated years of protests and legal action against the [Keystone XL](#) pipeline extension. Keystone XL would have carried tar sands oil – the same heavy, corrosive oil that spilled out of Line 6B. A leak on its 1,209-mile journey from Alberta, Canada to Steele City, Nebraska could have contaminated Nebraska's Ogallala aquifer, which provides 30 percent of America's irrigation water. A decade of activism led by Indigenous people, conservative ranchers, environmentalists, and landowners finally led to the project's abandonment in June 2021.

Water has been a galvanizing issue in other major pipeline protests as well. Opposing DAPL in 2016, Indigenous demonstrators chose to call themselves [Water Protectors](#) rather than "pipeline protesters," emphasizing our need for water

and responsibility to protect it. If DAPL leaked, it could poison [Lake Oahe](#), a Missouri River reservoir that the Standing Rock Sioux Tribe relies on for drinking water. In Minnesota, ongoing Indigenous-led protests against the [Enbridge Line 3 pipeline](#) likewise center on Indigenous people's ability to protect their unceded land from oil spills.

Locked-in Emissions and a Threat to the Seventh Generation

Pipelines also threaten public safety by contributing to climate change. Fossil fuel companies use pipelines to sell more oil and gas, but they are expensive to build. To be cost-effective, pipelines have to last decades – the average pipeline has a [lifespan of 50 years](#). Companies building pipelines today are betting on a future where we continue expanding oil and gas, rather than investing in alternatives. We cannot wait 50 years to stop the climate crisis.

[The Intergovernmental Panel on Climate Change](#) is clear that we must reduce carbon emissions to net zero by 2050 to avoid the worst effects of climate change. [The Biden administration](#) has set an intermediate benchmark toward meeting these goals: the United States will reduce carbon emissions to 50% of 2005 levels by 2035. That leaves thirteen years to dramatically reduce our reliance on oil and gas. When fossil fuel companies put new pipelines in the ground, they are investing in a future where we burn as much oil and gas in 2070 as we do today, and our children bear the climate consequences.

Indigenous-led Protests Are Working – and Threatening the Fossil Fuel Industry

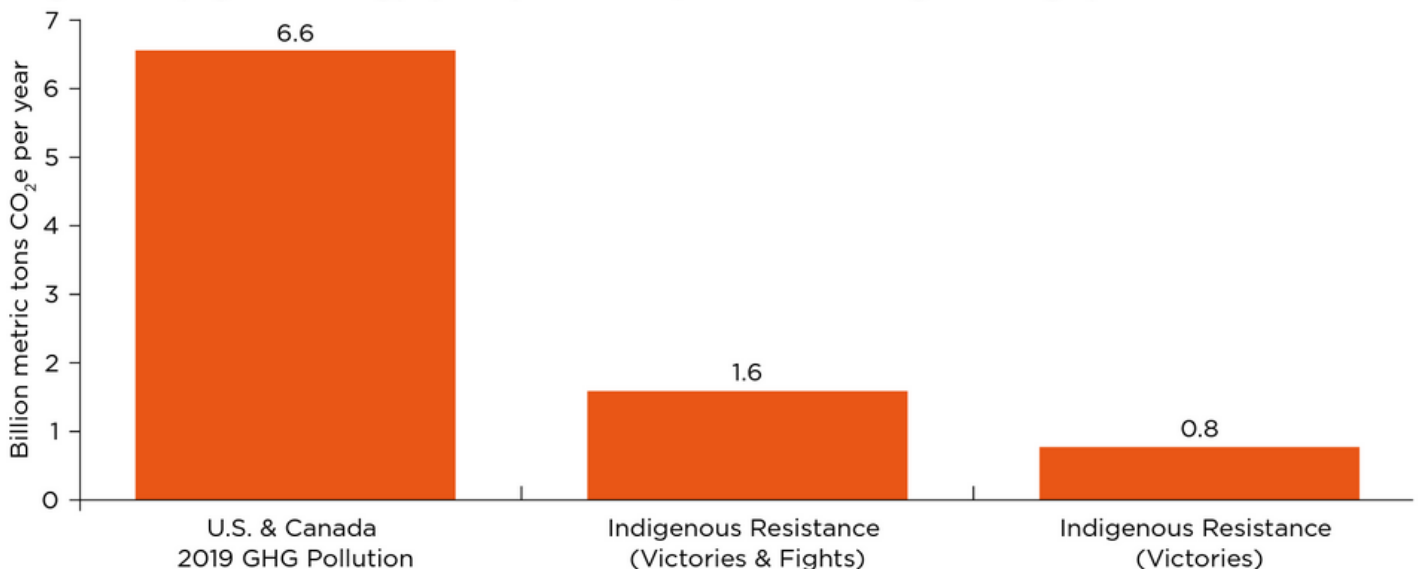
Indigenous activists have put their bodies on the line to protect their rights to clean water and self-determination. These protests are making an impact – on specific projects like Keystone XL and DAPL, and the struggle for climate action overall.

A joint [report](#) from Indigenous Environmental Network and Oil Change International examines 26 Indigenous-led protest movements against pipelines and other fossil fuel projects in the United States and Canada. Many of the movements have already seen success, preventing new fossil fuel infrastructure from coming online. If these fossil fuel projects had been built, they would have locked in higher levels of carbon

emissions. The report finds that successful Indigenous-led campaigns “represent the carbon equivalent of 12 percent of annual U.S. and Canadian pollution, or 779 million metric tons CO₂e.” By this measure, Indigenous-led protest is among the most successful drivers of ambitious climate action that exist.

By blocking fossil fuel projects, Indigenous activists have kept a lot of carbon out of our atmosphere. What about projects that are still actively being protested? Ongoing Indigenous struggles represent another 12% of U.S. and Canadian annual pollution, or 808 million metric tons CO₂e. If the movements prevail, Indigenous resistance will have slowed or stopped 1.587 billion metric tons of CO₂e—equivalent to 24% of annual U.S. and Canadian emissions.

Indigenous campaigns are resisting projects equal to at least 1/4 of U.S. & Canadian greenhouse gas pollution



Indigenous Environmental Network and Oil Change International, "[Indigenous Resistance Against Carbon](#)" (2021).

This showcases the power of Indigenous-led protests. It also demonstrates an important general principle: Protests work. They can defeat oil pipelines, protecting local water resources and keeping the planet cool.

However, those results are hard-won and never guaranteed – and recent trends have made it even harder. The Keystone XL pipeline extension took a decade of organizing before it was canceled for good. The Dakota Access Pipeline is once again operating – [and leaking](#) – eight years after the protests at Standing Rock. In that time, oil-friendly legislators have worked hard to enact new laws and silence pipeline protests.

Part 2 will dive into how this has unfolded.



Part 2: How to Criminalize Protest



In nearly 2017, the Water Protectors were winning. Through protests, prayers, and lawsuits, Indigenous-led activists had halted construction of the [Dakota Access Pipeline](#) (DAPL) near the Standing Rock Sioux Tribe's reservation. Today, DAPL is operating, overriding the tribe's requests and threatening to contaminate their water supply. But even this temporary victory scared the fossil fuel industry and legislators that support them. In 2017, three state legislatures introduced bills designed to silence future protests at pipelines and other oil and gas facilities.

The bills failed in two states, [Georgia](#) and [Colorado](#), but passed in a third state: Oklahoma. On paper, these bills protect

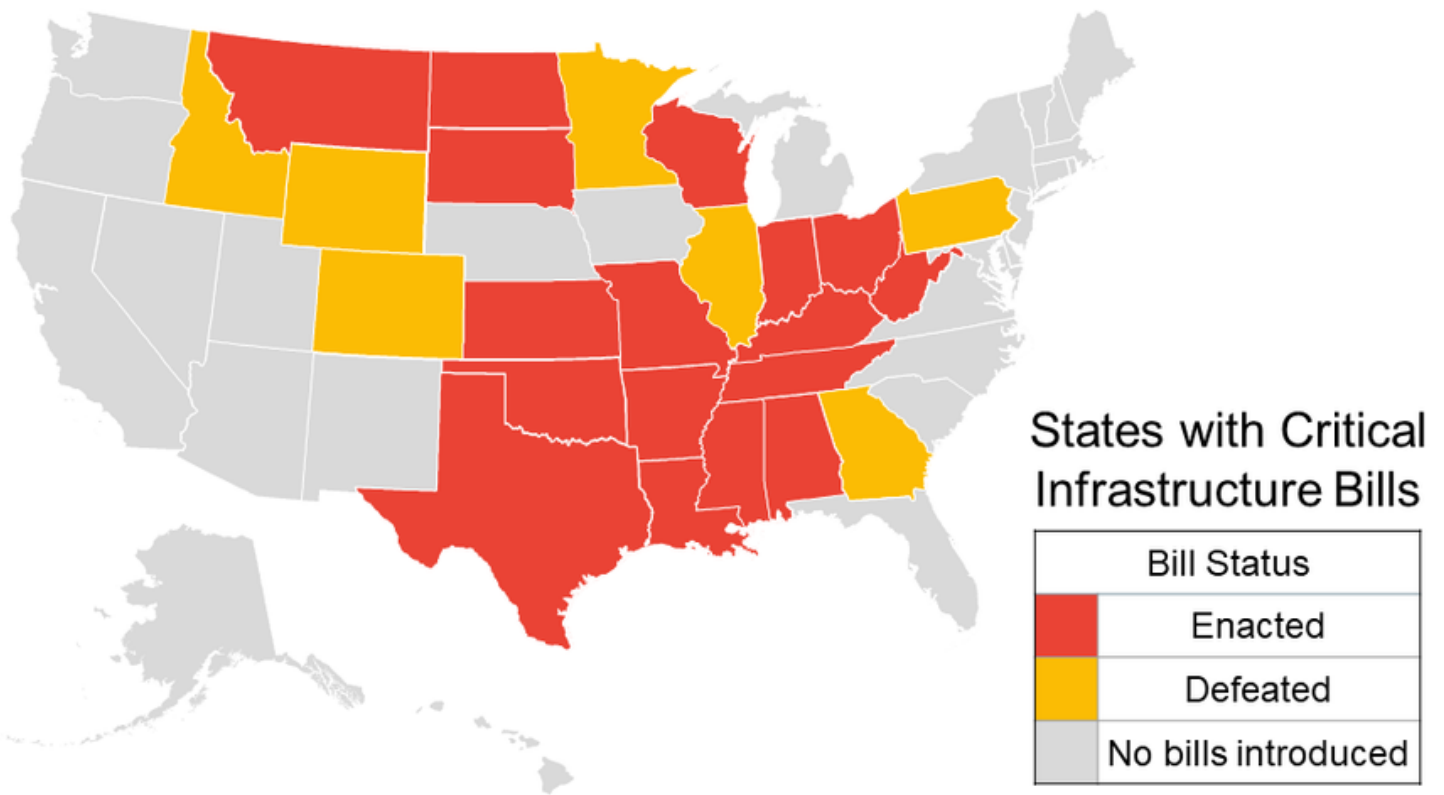
“critical infrastructure” from dangerous actors. In practice, they criminalize good-faith protests near pipelines and other fossil fuel facilities.

Within a year, a group of conservative legislators known as the American Legislative Exchange Council (ALEC) had turned Oklahoma's twin anti-protest bills ([HB 1123](#) and [HB 2128](#)) into a unified model bill for other states to copy. They called it the [Critical Infrastructure Protection Act](#). Since 2017, similar pipeline protest bills have been introduced in a total of 24 states. Seventeen have passed these bills into law: [Alabama](#), [Arkansas](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Mississippi](#), [Missouri](#), [Montana](#), [North Dakota](#), [Ohio](#), Oklahoma,

[South Dakota](#), [Tennessee](#), [Texas](#), [West Virginia](#), and [Wisconsin](#).

These laws target individuals and entire organizations with outsized penalties for protest actions near fossil fuel assets – dramatically raising the stakes for protest participants and offering prosecutors powerful discretion to punish peaceful protesters.





Anti-protest critical infrastructure bills have been enacted in seventeen states: Alabama, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. Legislatures have considered them in seven more states: Colorado, Georgia, Idaho, Illinois, Minnesota, Pennsylvania, and Wyoming. Data from the [International Center for Not-For-Profit Law](#).

Critical Infrastructure: A Broad Term with a Targeted Purpose

The first of Oklahoma's twin bills, HB 1123, uses a seventeen-category list to define "critical infrastructure facilities." The definition emphasizes pipelines and other types of oil and gas facilities, but it is not obvious that the bill would end up deterring pipeline protests. That's why Oklahoma Representative Scott Biggs had to clarify the bill's purpose: to prevent people from protesting pipelines in Oklahoma.

Presenting the bill in a [House Judiciary committee](#), Rep. Biggs referenced

North Dakota's DAPL protests and acknowledged that some anti-pipeline demonstrations have succeeded. "Because pipelines have been protested, the pipelines haven't been built," he said. Rep. Biggs considered that a problem, so he raised the stakes on the [House floor](#): "Time and again these protests have turned violent." Therefore, HB 1123 "is a preventative measure... to make sure that doesn't happen here."

Rep. Biggs emphasizes violence but neglects to mention who caused it. Documents obtained by [The Intercept](#) show that TigerSwan, a private security firm that worked on DAPL, treated peaceful demonstrators like terrorist agents. The firm

sought to discourage, divide, and "delegitimize the anti-DAPL movement" using a social media disinformation campaign – not to mention attack dogs, water cannons, and rubber bullets. Despite being [targets of disproportionate violence](#), the large majority of protests stayed entirely peaceful.

The demonstrators were vindicated in December 2016, when the U.S. Army Corps temporarily [halted DAPL construction](#) for environmental review. After seeing the protesters' success, lawmakers passed HB 1123 and HB 2128 in early 2017 to ensure public criticism against pipelines would fail in Oklahoma.

Designed to Intimidate Protesters

Other states followed Oklahoma's example when ALEC, the conservative group of legislators and private sector interests, combined Oklahoma's HB 1123 and HB 2128 into a [model bill](#) for lawmakers to copy at scale. Finalized in 2018, this bill quickly

gained traction in conservative legislatures across the country.

The Oklahoma-ALEC model provides two strategies to deter people from demonstrating near fossil fuel assets:

1. Establish oversized penalties for individual actions at "critical infrastructure facilities" (CIFs).
2. Subject organizations to hefty fines and lawsuits for associating with protesters—also known as "vicarious liability".

First, the model bill outlines penalties for individuals who trespass on CIF grounds, trespass with an intent to vandalize a CIF, or succeed in vandalizing, defacing, or otherwise tampering with a CIF. It is important to understand that actions like trespassing were already illegal before critical infrastructure bills came along. [Activists know that](#). When people trespass to make their voices heard, they are often engaging in civil disobedience, an established form of nonviolent protest that was vital to the U.S. Civil Rights movement.

Excerpt from Oklahoma HB 1123	Excerpt from the ALEC model bill
<p>B. Any person who shall willfully damage, destroy, vandalize, deface or tamper with equipment in a critical infrastructure facility shall, upon conviction, be guilty of a felony punishable by a fine of One Hundred Thousand Dollars (\$100,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years, or by both such fine and imprisonment.</p>	<p>B. Any person who shall willfully damage, destroy, vandalize, deface or tamper with equipment in a critical infrastructure facility shall, upon conviction, be guilty of a felony punishable by a fine of {dollar figure}, or by imprisonment in the custody of the {Department of Corrections [or substitute the appropriate State equivalent thereof]} for a term of not more than {length of time}, or by both such fine and imprisonment.</p>

ALEC turned Oklahoma's HB 1123 and HB 2128 into a model critical infrastructure bill for other states to copy.

Demonstrators who engage in civil disobedience expect consequences, but critical infrastructure bills increase those penalties to life-altering levels. Threats of felonies, long-term imprisonment, and unpayable fines intimidate people from speaking out against oppression or threats to their community.

Second, the Oklahoma-ALEC model imposes “vicarious liability,” its most powerful and previously unheard of deterrent against protest. This provision puts organizations on the hook for loosely-defined associations with protesters. The penalties include criminal and civil liability. Criminal liability kicks in when protesters get arrested and fined under a critical infrastructure law. Whatever fine the protester pays, courts can charge ten times that amount to any organization that “conspired” with the protester. For civil liability, the protesters only need to be arrested. Even if the courts find them innocent, a pipeline company could sue the protesters and any organizations that “provide consideration to” them.

What does it mean to “conspire” or “provide consideration” to protesters? If an organization exchanges emails with someone who later paints a protest slogan on a pipeline, is the organization liable for a million dollar fine? That “would be up for the courts to decide,” according to Rep. Mark McBride, who sponsored Oklahoma's HB 2128. [Legal researcher Connor Gibson](#) notes that this vague language makes organizations wary about working with activists on issues of environmental protection and tribal sovereignty. The Oklahoma-ALEC bill weaponizes ambiguity to intimidate organizations and strip protesters of vital support.

Harsh penalties and open-ended definitions characterize the Oklahoma-ALEC bill. Through vicarious liability, the bill threatens to prosecute organizations for supporting protesters. In its penalties for individuals, the bill paints with overbroad strokes: it conflates “defacing” with “destruction,” putting a protester with a can of spray paint in the same same criminal box as someone with a bomb. Even in defining

Crimes and Punishments in Oklahoma House Bill 1123 and HB 2128			
Crime	Punishment		
	Classification	Fine	Imprisonment
Trespass	Misdemeanor	>\$1,000	6 months
Intent to vandalize	Felony	>\$10,000	1 year
Vandalism	Felony	\$100,000	<10 years
Aiding protesters	-	\$10,000 - \$1,000,000	-

the term “critical infrastructure facility,” Oklahoma Rep. Cory Williams [points out](#) that the bill can be “open-ended and allow some abusive prosecution.” These provisions blur the line between permitted and penalized conduct. Together, they have huge potential to deter good-faith activism.

Versions of this bill spread across the nation, raising the cost of participating in protests against oil and gas pipelines. How do these laws interact with the protections for protest guaranteed in the First Amendment? This question is answered in Part 3.



work on
angel's dialog!

Part 3: Are Pipeline Protest Laws Constitutional?

Since 2017, legislation to criminalize pipeline protests has appeared in nearly half of U.S. states.

Claiming to protect “critical infrastructure,” outsized punishments in these laws seem designed to shield fossil fuel infrastructure projects from public criticism. This threat to free speech raises an important question: Do critical infrastructure laws conflict with First Amendment rights in the U.S. Constitution? No single court case could determine the constitutionality of all critical infrastructure laws, since they vary state by state. However, a [legislative briefer](#) released by the International Center for Not-For-Profit Law (ICNL, an organization that monitors free speech protections) explains that critical infrastructure laws could run into trouble for

restricting speech based on discriminatory intent and unclear or unnecessary provisions.

Discriminatory Laws and Discriminatory Enforcement

Regarding intent, lawmakers cannot target a particular protest movement just because they disagree with its message. Even when the text of the law does not appear to regulate speech itself, the [Supreme Court](#) has found laws to be unconstitutional if the government enacts them "because of disagreement with the message [the speech] conveys." So even though the Oklahoma bills do not mention protest, they could still be ruled unconstitutional because lawmakers introduced the bills with the explicit intent to prevent anti-pipeline protests.

So far, no critical infrastructure laws have faced challenges based on discriminatory intent. However, lawmakers seem wary of the potential for these charges. As if to ward off free speech lawsuits, several state critical infrastructure laws include exemption clauses: the law cannot be used to prevent "protected conduct," including labor disputes and other types of protest. This is the case in [Indiana](#), [Louisiana](#), [Missouri](#), [Montana](#), [North Dakota](#), and [West Virginia](#). In practice, do these exemptions really protect protesters? A case in Louisiana suggests these free speech protections are empty promises.

Louisiana's critical infrastructure law, HB 727, says it does not apply to "lawful assembly," such as protest, or "lawful commercial or recreational activities," such as fishing. So it shouldn't have been a problem when three kayakers held a

peaceful protest where a pipeline crossed [public waters](#). They were obeying the law, just like the fishers and other boaters around them. Nevertheless, the pipeline's security personnel arrested the protesters and charged them with felony trespass under HB 727.

As the ICNL notes, those charges reveal discriminatory enforcement of the law. Fishers and protesters are equally protected under HB 727, but law enforcement only punished the protesters. They were threatened with felonies for nearly three years, until the charges were finally dropped in 2021. One of those arrested protesters, [Cindy Spoon](#), spoke out against this unfair treatment: "The refusal to prosecute us just proves what we already knew: these critical infrastructure laws are unconstitutional." Despite nominally protecting First Amendment rights, HB 727 helped a pipeline company silence protesters.

Governor Vetoes Reveal Problematic Language

Thus, critical infrastructure laws face questions of constitutionality for their apparently discriminatory intent and enforcement. But the problem also lies in the text of the laws themselves. Their broad and ambiguous language can create additional problems for the right to protest. This is clearest in the bills that almost made it.




Governors have vetoed critical infrastructure bills in three states: [Louisiana](#), [Minnesota](#), and [Wyoming](#). In each case, the governor explained that the bills contained overly broad language and redundant penalties. Broad language blurs the line between legal and illegal behavior. Redundant penalties – designating new crimes for conduct that already carries legal consequences – expose protesters to severe criminal charges without improving public safety in a meaningful way. Both issues end up intimidating protesters to keep them from criticizing pipelines and other fossil fuel infrastructure.

The governors in Louisiana and Wyoming took issue with the penalties and definitions in their states’ critical infrastructure bills. The [Louisiana bill](#) would have broadened the critical infrastructure definition from HB 727 to include “water control structures,” such as levees. These are common recreation sites in Louisiana. The bill would have made legitimate activities – including protest –

illegal near these water structures, opening the door for selective, discriminatory law enforcement like what happened in 2018. Similarly, the [Wyoming bill](#) had a broad critical infrastructure definition and could have criminalized unintended activities. In both cases, the governors also found the bills unnecessarily punitive.

In Minnesota, Governor Mark Dayton pinpointed the difference between protecting infrastructure and targeting protesters in 2018 when he vetoed [Senate File \(SF\) 3463](#) for being harmful to the public good. He also called SF 3463 unnecessary, citing [existing Minnesota statutes](#) that narrowly protect critical infrastructure without encroaching on civil liberties.

The bill’s vicarious liability clause is a major factor in chilling free speech. Under SF 3463, loose associations with protesters could have resulted in devastating fines. Gov. Dayton plainly condemned this in his [veto message](#): “I will not support a bill that

Critical Infrastructure Bills Vetoed by Governors				
	Bill	Year	Governor	Reason for veto
	Louisiana HB 197	2020	John Bel Edwards (Dem.)	- Redundant de facto penalties - Broad definition of “critical infrastructure”
	Minnesota SF 3463	2018	Mark Dayton (Dem.)	- Redundant penalties - Vicarious liability - Unclear language
	Wyoming SF 0074	2018	Matt Mead (Rep.)	- Redundant penalties - Broad definition of “critical infrastructure”

holds Minnesotans responsible for other people's actions with which they had no direct involvement," he wrote. "Those [existing] statutes are sufficient to protect the public safety, while still respecting the First Amendment rights of members of that public."

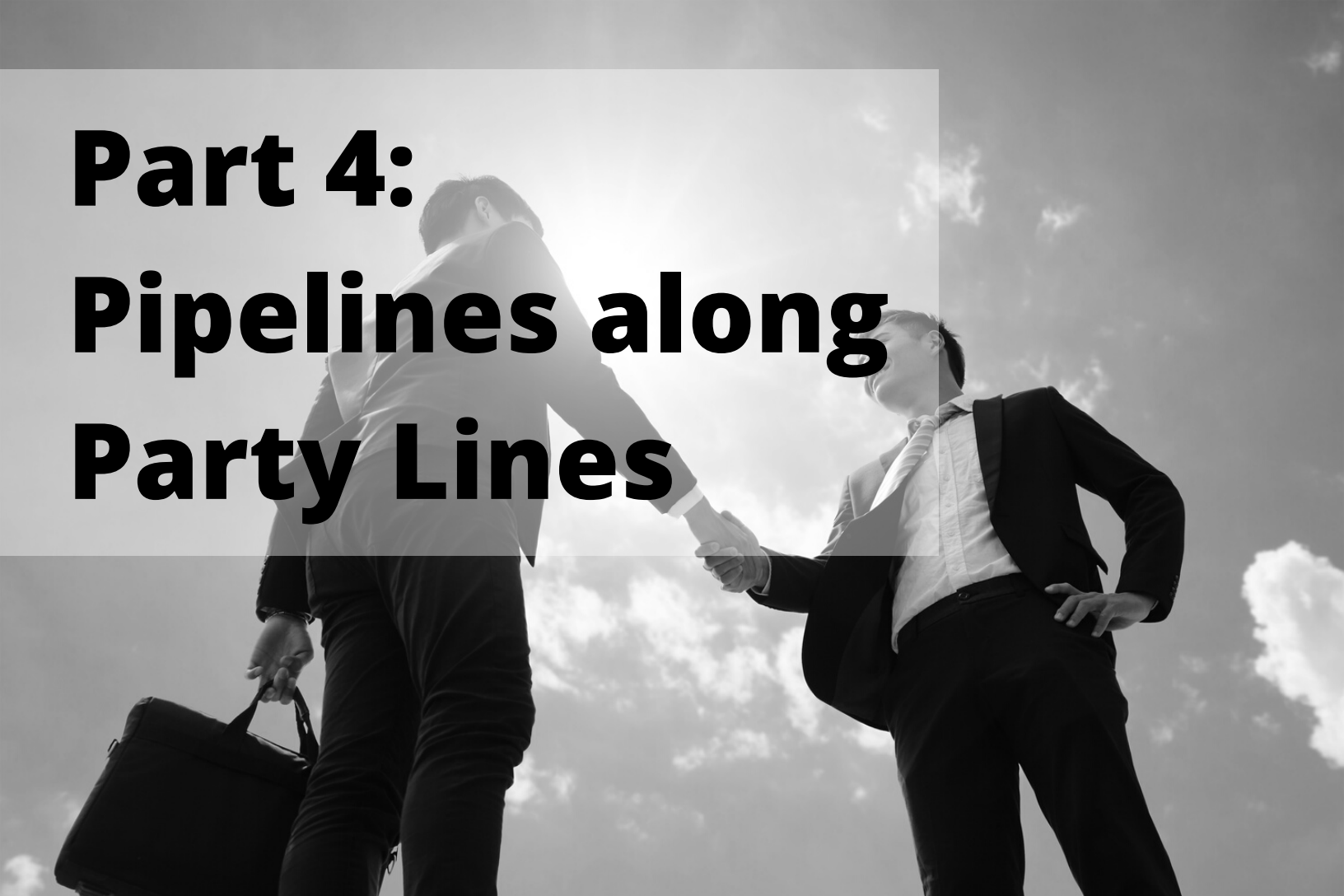
Across the nation, in states where these bills have not been vetoed, those First Amendment rights are under assault. Critical infrastructure laws like Louisiana's HB 727 sometimes result in peaceful protesters getting arrested. However, deterrence is the greatest danger to free speech: critical infrastructure bills are designed to stop pipeline protests before they happen. They accomplish this by intimidating protesters and organizations alike. With threats of felony charges and ruinous fines, critical infrastructure bills aim to deter people from working on issues of environmental protection or Indigenous rights – especially when it conflicts with fossil fuel interests.

But why did vicarious liability fail in Minnesota, when the provision has passed in so many other states? Explore this question and more in Part 4.



DEMOCRAT

REPUBLICAN

A black and white photograph of two men in business suits shaking hands. The man on the left is seen from the back, holding a briefcase. The man on the right is facing him, with his hand on his hip. The background is a bright sky with scattered clouds.

Part 4: Pipelines along Party Lines

In 2015, the [Keystone XL](#) pipeline extension lost its construction permit. In 2016, construction of the [Dakota Access Pipeline](#) was halted for regulatory review. Protests played a large role in delaying or entirely defeating these pipeline projects. That's why state legislators started criminalizing pipeline protests in 2017, as you can read in Part 1 of this report.

By early 2022, at least twenty-four states had introduced bills that criminalize protests occurring at “critical infrastructure facilities,” such as pipelines. Of these, seventeen states have passed those bills into law: [Alabama](#), [Arkansas](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Mississippi](#), [Missouri](#), [Montana](#), [North Dakota](#), [Ohio](#), [Oklahoma](#),

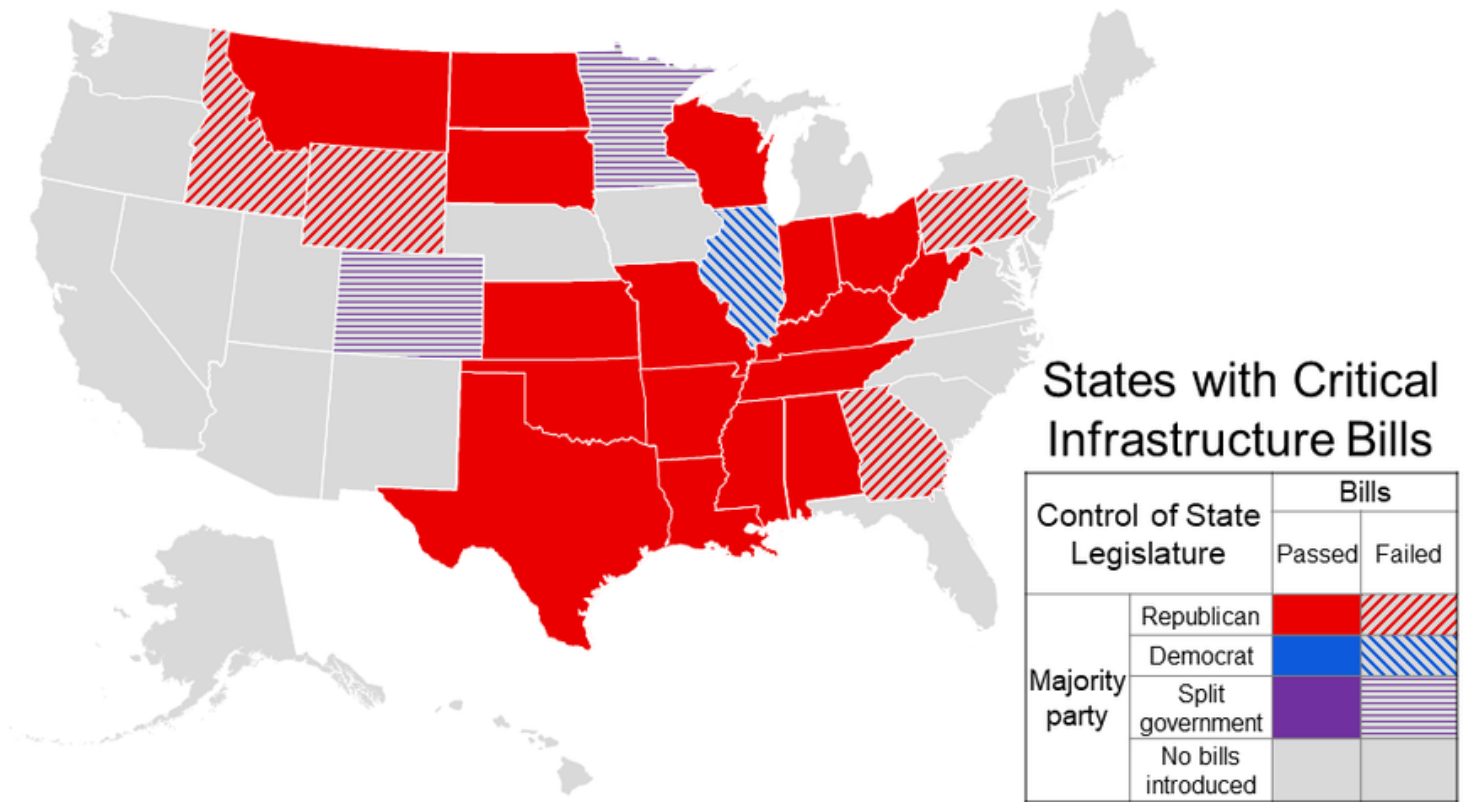
[South Dakota](#), [Tennessee](#), [Texas](#), [West Virginia](#), and [Wisconsin](#).

Anti-protest critical infrastructure bills, by year considered																		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Bill Status		
2017	OK HB1123	OK HB2128	CO SB17-035	GA SB1													Enacted	18
2018	LA HB727	MN** SF3463	OH SB250	PA SB652	WY** SF0074												Defeated	25
2019	IN SB471	MO HB355	ND SB2044	TN SB264	TX HB3557	WI AB426	ID* SB1090	IL HB1633	KY HB238	MN* SF2011	MO* SB293	MS SB2754	PA* SB887	TX* SB2229	WY* HB10		Total	43
2020	KY HB44	MS HB1243	SD SB151	WV HB4615	AL SB45	LA** HB197	MN* HF3668	MN* HF2966									*No floor votes	14
2021	AR HB1321	KS SB172	MT HB481	OH SB33	AL* HB516	MN* HB1558	MN* SF355	MN* HF254 / SF386	MN* HF129 / SF1378								**Vetoed	3
2022	AL SB17	IL* SB3814																

Data sourced from the International Center for Not-For-Profit Law (ICNL) [US Protest Law Tracker](#) and [Legiscan](#).

Over six years, nearly half of state legislatures have considered enacting a law that prioritizes the interests of pipeline companies over the rights of everyday citizens. Why do these critical infrastructure bills appear in some states, but not others? Partisanship turns out to be a crucial factor.





Partisan control of state legislatures in the year when a pipeline protest bill was passed, or in the year a pipeline protest bill was most recently considered. Legislature data from [Ballotpedia](#).

Partisanship & Pipeline Protests

As a rule, Republican-controlled legislatures overwhelmingly introduce and pass critical infrastructure protest bills. Although three states have introduced these bills with split or Democratic-controlled legislatures, the bills have only become law in Republican states. So far, the bills have not passed in any states while Democrats hold a majority in at least one legislative chamber.

Partisanship helps explain the difference between Wisconsin and Minnesota. Activists in both states have garnered national attention for protesting energy company Enbridge’s [Line 3](#) and [Line 5](#) pipeline

projects. Both states passed a critical infrastructure bill to criminalize protest while Republicans controlled both legislative chambers. But the bill only became law in Wisconsin, where Republicans have held consistent majorities in the state’s upper and lower legislative chambers [since 2010](#).

In contrast, Minnesota’s most recent period of Republican control was just two years, between the 2016 and 2018 elections. That Republican-led legislature managed to pass a pipeline protest criminalization [bill](#) in 2018, but it was [vetoed](#) by Governor Mark Dayton, a Democrat. Since then, Republican and third-party legislators [have introduced seven additional pipeline protest bills](#), but none of them even reached a floor vote.

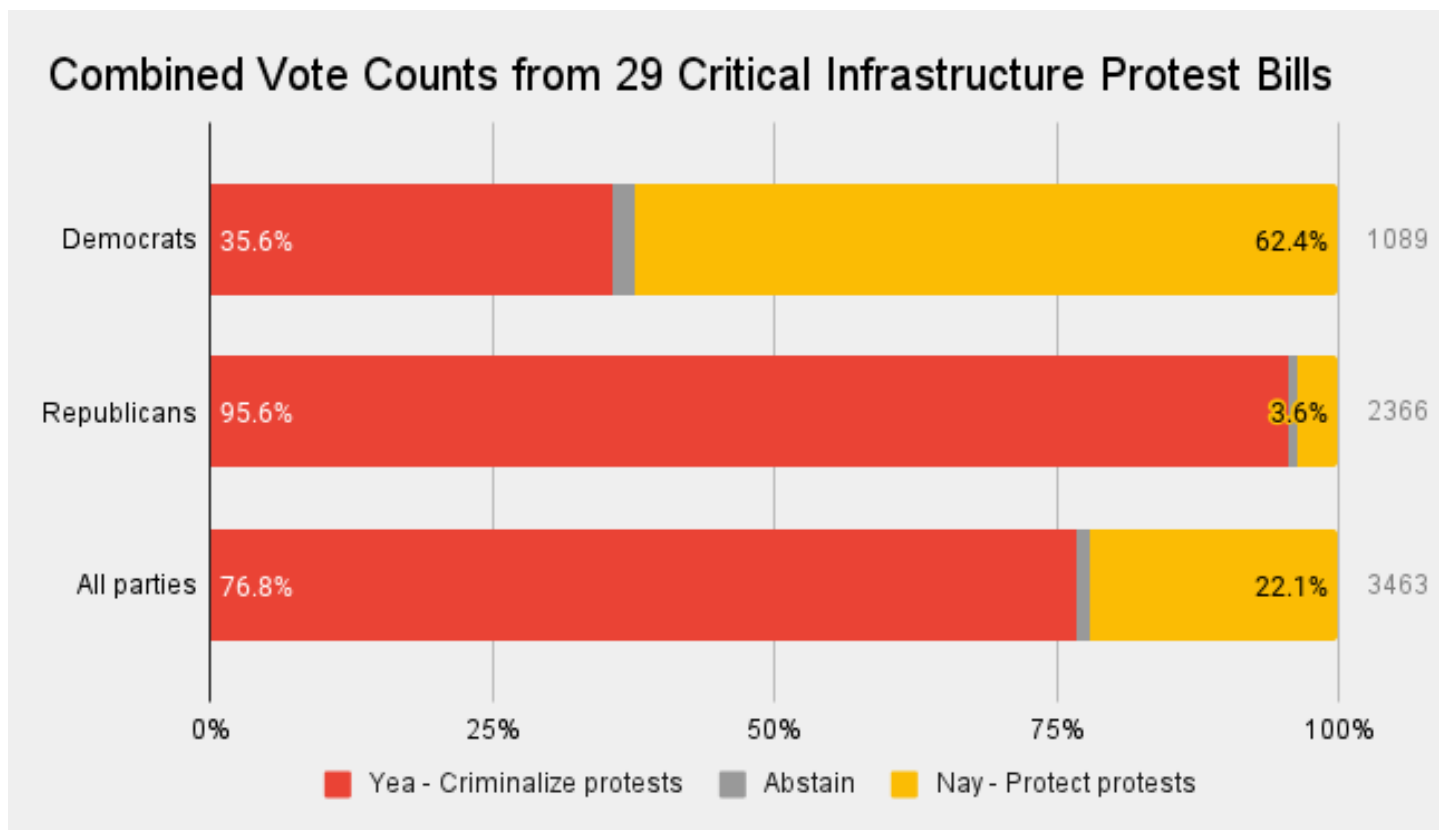
When Democrats gained a majority in Minnesota’s House in 2019, protest criminalization bills became a nonstarter.

As with any rule, there are outliers. Sometimes, passing these bills takes time. For example, Ohio introduced pipeline protest bills in [2018](#) and [2019](#), but it took two years for the 2019 bill to become law. Sometimes, bills die because of unique political situations. In Wyoming, conservative ranchers became unexpected allies of Indigenous and environmental activists when proposed critical infrastructure bills seemed to [threaten the ranchers’ land rights](#). And in the Wisconsin example, despite fitting the pattern of passing through two

GOP-controlled legislative chambers, the bill became one of the few signed into law by a Democratic governor.

Can the Bills Pass in Democrat-Controlled Legislatures?

So far, anti-protest critical infrastructure laws have only passed in Republican-dominated legislatures. However, a fair share of Democrats have also supported these bills. Nationally, over one third of Democratic lawmakers that have had pipeline protest bills come before them have voted in favor of passing it.



Totals from all 51 floor votes on critical infrastructure bills across 24 states, sorted by legislators’ political affiliation. Only 29 of the 43 bills introduced across the U.S. reached a floor vote. The “All parties” count includes votes from independent and third-party legislators. Vote count data sourced from Legiscan.com.

That is far better than Republican legislators, who favored protest criminalization with 95% of their votes. Yet it shows that [not all Democrats are climate heroes](#). Consistent with other attacks on climate legislation, Republicans are overwhelmingly responsible for climate destruction – but Democrats are by no means off the hook or immune to special interest influence.

This is clearest in Illinois. Despite having Democratic majorities in both legislative chambers, Illinois has introduced two pipeline protest bills. The first bill, [HB 1633](#), passed the House in 2019 with support from nearly half the Democratic Representatives. The second, [SB 3814](#), was introduced in 2022 but never reached a floor vote. Although these bills struggle in Illinois, how did pipeline protest criminalization bills gain any traction in such a thoroughly blue state?

Oil industry tactics played a role. Illinois' 2019 pipeline protest bill had [support](#) from some of the heftiest names in the pipeline business: Enbridge, owner of the Line 3 and Line 5 pipelines in Minnesota and Wisconsin; Energy Transfer Partners, owner of the Dakota Access Pipeline; and TransCanada, owner of the Keystone XL pipeline. Even Democratic legislators can be vulnerable to fossil fuel company campaigns.

Oil and gas companies want to outlaw pipeline protests because they know these movements bring real change. People protest pipelines to advocate for clean water and energy – for a climate that helps all people thrive – but critical infrastructure laws undermine those efforts in many states.

Democrats have a much better track record on climate legislation than Republicans, but representatives in both parties need accountability.

What's at stake are our rights, the safety and sovereignty of our Indigenous neighbors, and our future.

About Climate Cabinet Education

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We create actionable data & policy tools to support a groundswell of local climate leadership. Think of us as a climate policy staffer, at scale.

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About Stanford Earth Systems

The Earth Systems Program is an interdisciplinary environmental science major and coterminal masters program at Stanford University. As Earth Systems scholars, students learn about and independently investigate complex environmental problems caused by human activities in conjunction with natural changes in the Earth system.

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