The “Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019” Threatens Peaceful Protests and Free Speech

On June 3, 2019, Department of Transportation Secretary Elaine L. Chao proposed the “Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019,” a draconian legislative proposal that would dramatically increase criminal penalties for protests around gas and oil pipelines and pipeline construction sites. The penalties are severe: **Non-violent protesters could be punished with 20-year prison sentences and/or steep fines.**

The proposal would amend 49 U.S.C § 60123(b) by replacing “damaging or destroying” with “damaging, destroying, vandalizing, tampering with, impeding the operation of, disrupting the operation of, or inhibiting the operation of” an interstate pipeline facility. It would also expand the scope of the provision to include not only operational facilities but those “under construction.”

**Limiting and Chilling the Right to Protest**

If enacted, the proposal could make peaceful protests a crime subject to an extreme new penalty. Three of the proposal's new terms are defined by *Webster's Unabridged* as:

- **Impede**: to interfere with or get in the way of progress of;
- **Disrupt**: to interrupt to the extent of stopping, or preventing normal continuance of;
- **Inhibiting**: to prohibit from doing something.

The new language is dangerous as it can apply to peaceful protests, like those that temporarily block access roads, sit-ins that prevent maintenance personnel from reaching a pipeline, and even actions at an energy company's headquarters that delay pipeline operator personnel.

The proposal also seeks to insert language that includes facilities under construction, where most pipeline protests have occurred. Yet there is no provision defining “under construction.” When does construction begin? During permit approval, after an area is fenced off, or once land is actually dug into? The uncertainty could enable authorities to criminalize protest when they find it convenient.

Furthermore, 49 U.S.C. § 60123(b) criminalizes “attempting or conspiring to” damage or destroy pipelines. But under the proposal, these inchoate offenses would also apply to “impeding,” “disrupting,” and “interfering” with a pipeline or pipeline construction—subject to the same penalties of 20 years in prison and a steep fine. The proposal could therefore capture not only individuals who participate in pipeline protests, but those who support others in doing so. The broad sweep of this proposal would leave individuals unsure of the boundaries of the law and fearful of the penalty if they guess wrong—a recipe for chilled speech.

**Background: Anti-Protest Legislation Emerges Nationwide**

Since the powerful protests at Standing Rock and others around the Keystone XL pipeline, at least 19 states have introduced legislation attempting to silence peaceful protesters—specifically targeting pipeline activists on the frontlines of the fight for climate justice.

The first to do so was Oklahoma, which in 2017 enacted two laws—one civil and one criminal—targeting pipeline protests and protest-supporting organizations. The American Legislative Exchange Council (ALEC) adopted model legislation based on the Oklahoma laws, and versions of this model have now been introduced and enacted across the country.
Nine states have enacted these so-called “critical infrastructure” (CI) laws since Standing Rock: Indiana, Iowa (focused on “sabotage”), Louisiana, Missouri (pending), North Dakota, Oklahoma, South Dakota, Tennessee, and Texas

Ten states have introduced but not enacted CI bills: Colorado, Georgia, Idaho, Illinois, Kentucky, Minnesota, Mississippi, Ohio, Pennsylvania, and Wyoming

Advocates have sued over the new laws in Louisiana and North Dakota, and activists in several other states are considering bringing lawsuits of their own.

These bills disproportionately impact people of color—particularly Indigenous Americans—who are seeking to defend their land and water. Notably, the first state where one of these laws was enacted, Oklahoma, is a state with not only key oil and gas interests but the second largest indigenous population in the country.¹

The laws targeting protests are part of a larger trend of anti-protest legislation emerging across the country. Often pushed by ALEC, other anti-protest bills are threatening free speech on college campuses, the Black Lives Matter movement, and teacher strikes, among other peaceful campaigns. **Over 100 anti-protest bills have been introduced nationwide since late 2016.²** Far from slowing, the anti-protest legislative trend appears to be gathering steam. It is a growing threat to our constitutional rights and to civic engagement writ large.

**Key Takeaways:**

- CI Bills may be unconstitutional and could lead to costly, unnecessary lawsuits.
- CI Bills are ineffective in protecting critical infrastructure, but they will most likely chill criticism of environmental concerns or corporate wrongdoing.
- States already have laws on the books to protect critical infrastructure; these laws are duplicative and unnecessary.
- CI Bills contain vague and overbroad language that could have widespread consequences for free speech rights even beyond the protestors themselves.
- CI Bills are being drafted and promoted by powerful, out-of-state corporate special interests.
- CI Bills disproportionately affect some of the most underrepresented communities, criminalizing their right to protest.
- CI Bills undermine the right of indigenous communities and others to worship on sacred lands.
- CI Bills threaten the rights of landowners to oppose seizure of their property for infrastructure projects.
- Climate change is the real risk to critical infrastructure and national security, not protesters.
- Freedom of speech is a sacred American tradition, protected by the Constitution, and should not be thwarted by unjust laws and policies.

For further information please contact:
Maggie Ellinger-Locke, Staff Attorney, Greenpeace USA, mellinge@greenpeace.org
Sue Udry, Executive Director, Defending Rights and Dissent, sue@rightsanddissent.org

¹ [https://www.eia.gov/state/print.php?sid=OK#102](https://www.eia.gov/state/print.php?sid=OK#102)
² [http://www.icnl.org/usprotestlawtracker/](http://www.icnl.org/usprotestlawtracker/)