

Muzzling Dissent

How Corporate Influence over Politics Has Fueled Anti-Protest Laws

By Gabrielle Colchete and Basav Sen
Institute for Policy Studies



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Contents

Acknowledgments	4
Executive Summary	5
Introduction: Pipeline Protests Give Rise to Anti-Protest Laws	10
Case Studies: Status of Anti-Protest Laws in Three States	14
<i>Louisiana</i>	<i>14</i>
<i>Minnesota</i>	<i>16</i>
<i>West Virginia</i>	<i>18</i>
The Role of Fossil Fuel Political Funding	19
<i>Louisiana</i>	<i>19</i>
<i>Minnesota</i>	<i>20</i>
<i>West Virginia</i>	<i>21</i>
The Race and Class Dynamics of the Pipeline Fights Targeted by the Anti-Protest Laws	22
Local Concerns Fueling Protests	29
The Implications of “Critical Infrastructure Protection” Laws for Broader Protest Movements	35
Recommendations for Policymakers and Researchers	36

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Executive Summary

Environmental justice, racial justice, and Indigenous rights movements have gathered momentum in recent years, achieving crucial victories in efforts to halt or end extraction projects that endanger nearby residents. These developments have fueled a rise in attempts to criminalize and muzzle acts of civil protest, with disturbing implications not just for these natural resource fights but for a wide range of protest activities, including those that have erupted over racial justice and police brutality.

A certain legal tactic aimed at stifling activists and protests is becoming more and more popular with politicians under the thumb of powerful corporate lobby interests. Since 2017, so-called “Critical Infrastructure Protection” laws targeting protest movements have sprung up in states around the country, in an effort to muzzle opposition to construction of oil and gas pipelines and other polluting chemical and fossil fuel facilities. Under the premise of protecting infrastructure projects, these laws mandate harsh charges and penalties for exercising constitutional rights to freely assemble and to protest.

This report examines anti-protest laws passed or introduced in three states — Louisiana, Minnesota, and West Virginia — and traces how corporate influence has spurred elected officials to attempt to use those laws to tamp down opposition during the construction of new, controversial oil and gas pipelines in those states.

Freedom of Assembly

As Black Lives Matter protesters are met with paramilitary police repression and [draconian felony charges](#), state lawmakers and prosecutors are also attempting to crack down on community-led activism against oil and gas projects, passing “Critical Infrastructure Protection” laws that conflate acts of civil disobedience by impacted community members and activists with heinous, felony acts. Thirteen states have passed laws criminalizing protests against oil and gas projects since 2017.

These anti-protest laws elevate typical misdemeanor charges against peaceful protesters, such as trespassing, into felonies. They also hijack the idea of “critical infrastructure protection,” a term that has historically meant safeguarding vital infrastructure such as roads and bridges from dangers like natural disasters, terrorism, and cyber-attacks. One of the most chilling measures in these laws is the creation of criminal conspiracy liabilities for people and organizations that aid or support people protesting oil and gas projects.

These laws come as domestic oil and gas production are at a record high. For many communities that find themselves near the site of potential extraction projects, particularly those without much wealth or political influence, exercising their constitutional right to protest is one of the only viable avenues of resistance in this fight against powerful corporate polluters.

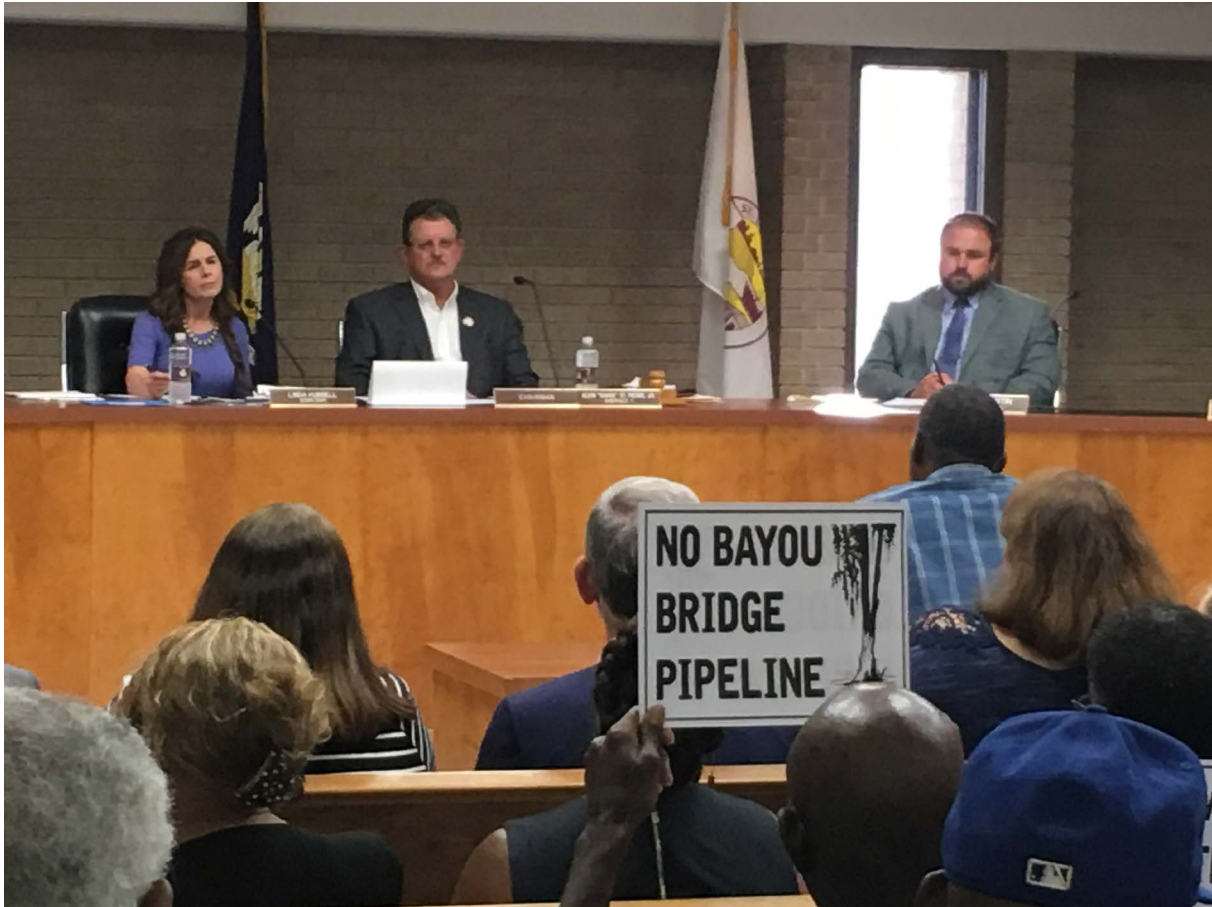


Photo courtesy of the Louisiana Bucket Brigade

Environmental Inequality

The most historically underrepresented communities are disproportionately impacted by oil and gas pipeline expansion. Big polluters often choose to locate their projects in close proximity to highly impoverished areas, Black communities, Indigenous tribal territories, and other communities of color. These populations have the least socioeconomic resources to challenge the fossil fuel giants building hazardous facilities in their backyards.

The demographics of communities surrounding the Bayou Bridge Pipeline in Louisiana, the Line 3 Pipeline in Minnesota, and the Mountain Valley Pipeline in West Virginia all follow this trend:

Louisiana: Energy Transfers' Bayou Bridge Pipeline

- » Although only 15 percent of the population residing in the census tracts along the Bayou Bridge Pipeline are Black, 27 percent of them live in poverty, which is more than twice the national poverty rate.
- » Impoverished populations are most highly concentrated in the petrochemical hubs at the beginning and end of the Bayou Bridge Pipeline's "phase 2" path: the Lake Charles area and a region overlapping Iberville, Ascension, and St. James Parishes that has been nicknamed "Cancer Alley" for its high number of cancer cases.
- » Of all the areas along the pipeline's path, the Tracts surrounding the Lake Charles and "Cancer Alley" petrochemical hubs also have the highest levels of exposure to harmful environmental toxins.

Minnesota: Enbridge Line 3

- » The Line 3 pipeline cuts through dense clusters of Ojibwe and Chippewa Reservations, and directly passes through sacred wetlands where the Ojibwe harvest wild rice.
- » 37 percent of the Indigenous population residing in the census tracts along Line 3 live below the poverty line, which is more than three times the national poverty rate.

West Virginia: Equitrans Mountain Valley Pipeline

- » The Mountain Valley Pipeline cuts through rural Appalachian communities, with a 15 percent average poverty rate of the combined census tracts in the path, about 25 percent higher than the national poverty rate.
- » Over half of the Tracts along the pipeline path have below-average life expectancy rates.

Corporate Capture

It isn't difficult to trace a connection between corporate and fossil fuel industry influence over politicians and the introduction and passage of these anti-protest laws. In fact, the fossil fuel industry has an army of lobbyists dedicated to garnering support. Marathon Petroleum, ExxonMobil, and Koch Industries are among the three most active companies involved in lobbying for the passage of "Critical Infrastructure Protection" laws nationwide.

Even the text of the legislation itself reflects that corporate influence. To varying extents, the language within these "Critical Infrastructure Protection" bills mimic a piece of [model legislation](#) drafted by the American Legislative Exchange Council (ALEC), a right-wing nonprofit funded by corporate interests. While ALEC membership is not always publicly disclosed, it is known that of the legislators in the three case studies in this report, the Governor of Louisiana is an ALEC Alumni, and one of the authors for a "Critical Infrastructure Protection" bill in Minnesota is a State Chair for ALEC.

Companies with vested interests in the adoption of these laws also make large contributions to the campaigns of the target state's legislatures. All of the anti-protest bills introduced in the three state case studies have been authored or sponsored by one or more legislators who have taken large campaign donations from oil and gas companies:

Louisiana

- » Louisiana's active "Critical Infrastructure Protection" law, HB 727, was drafted by the President of the Louisiana Mid-Continent Oil and Gas Association, Tyler Gray.
- » Representative Major Thibaut, who introduced HB 727, received \$6,600 in campaign donations from oil and gas companies, the third highest of more than 40 industries he received contributions from.
- » Governor John Bel Edwards received \$94,750 in campaign donations from the oil and gas industry prior to signing HB 727. Among the donors was Energy Transfer, owner of the Bayou Bridge Pipeline.
- » Representative Jerome Zeringue, who authored HB 197, had taken \$12,066 in campaign contributions from oil and gas interests, more than any other sector. The oil and gas interests on his donor list included Phillips 66 Company, a Bayou Bridge Pipeline stakeholder.

Minnesota

- » Bill Ingebrigtsen and David J. Tomassoni, State Senators who sponsored the anti-protest bill SF 2011, both receive regular contributions from the Northwest Petroleum PAC. Tomassoni also received contributions from several law firms with a significant clientele in the fossil fuel industry.
- » At least 2 of the legislators who introduced HF 2966, the State House version of SF 2011, have also received large contributions from Northwest Petroleum PAC prior to the bill's introduction. Representative Matt Grossell had also taken donations from the Koch Industries-owned Flint Hills Petroleum Refinery and an Enbridge lobbyist.

West Virginia

- » Delegate John Kelly, the author of West Virginia's active anti-protest law, HB 4615, received \$1,000 from Dominion Energy, which at the time was attempting to complete the now-defunct Atlantic Coast Pipeline.
- » Governor Jim Justice had taken \$21,000 from the oil and gas industry prior to signing HB 4615. Some of his top donors included Marathon Petroleum, Dominion Energy, and EQT Corporation, the hydrocarbon company overseeing the construction of the Mountain Valley Pipeline.

It's also clear why corporate fossil fuel lobbyists, and politicians to whom they have given campaign donations, are attempting to steamroll passage of these laws in the first place. The cancellation of Duke and Dominion Energy's Atlantic Coast Pipeline offers a prime example of how communities can successfully organize against wealthy, powerful corporations. After a combination of disruptive anti-pipeline protests and several legal battles that delayed construction and significantly upped costs, Duke and Dominion decided to abandon the pipeline.

Instead of intervening on behalf of the public to stop the project, West Virginia state officials overwhelmingly intervened on behalf of corporate polluters to the fullest extent. Nevertheless, public opposition proved insurmountable. This victory demonstrated that freedom of assembly is an indispensable tactic for effective community resistance when state governments are captured by corporate interests rather than driven by a duty to public health and safety.

Introduction: Pipeline Protests Give Rise to Anti-Protest Laws

It began with Standing Rock. Rooted in multi-issue demands to protect nearby communities, Lakota Sioux and other activists gained national and international attention for high-profile acts of civil disobedience and lawsuits to prevent the construction of the Dakota Access Pipeline on sovereign Indigenous land, under Lake Oahe near the Standing Rock Indian Reservation. Led by the founders of the Sacred Stone Camp and groups like ReZpect Our Water, the International Indigenous Youth Council, and Indigenous Environmental Network, starting in 2016, the anti-Dakota Access Pipeline protests began to gain such notoriety that they propelled once-obscure issues surrounding tribal sovereignty and environmental hazards onto the national stage.

After watching the profound power of unity and resolve among Lakota Sioux and other pipeline opponents, fossil fuel companies have been working with policymakers ever since to prevent a repeat of the Standing Rock protests anywhere else.

Efforts to suppress protests against oil and gas pipelines have taken state governments by storm in the years following the Standing Rock protests. As the oil and gas industry expands domestically, they are repeatedly met with resistance from locals who disapprove of their hazardous projects being built in their communities. Objections range from water contamination risks to the disruption of sacred tribal lands. Pipeline opponents have not only challenged these projects via lawsuits but also by putting their own bodies on the line. Protest tactics ranging from tree-sits to human blockades are increasingly met with draconian repression from both police forces and lawmakers.

Oklahoma was the first state to pass what is now known, euphemistically, as a “Critical Infrastructure Protection” law in 2017, with a clear objective to deter Standing Rock-inspired protests. The possibility of Indigenous land and water protectors following in the footsteps of the Lakota Sioux is particularly threatening to the fossil fuel industry in Oklahoma, which is not only [50 percent tribal land](#), but is also a [central location for oil and gas industry interests](#).

After the Oklahoma state legislature preemptively passed their anti-protest law, which greatly increased penalties against protesters who enter fossil fuel infrastructure sites, the right-wing, corporate funded American Legislative Exchange Council (ALEC) took an interest in the idea.

Drawing inspiration from the Oklahoma law, ALEC drafted their own model policy to disseminate to other state legislatures, called the [“Critical Infrastructure Protection](#)

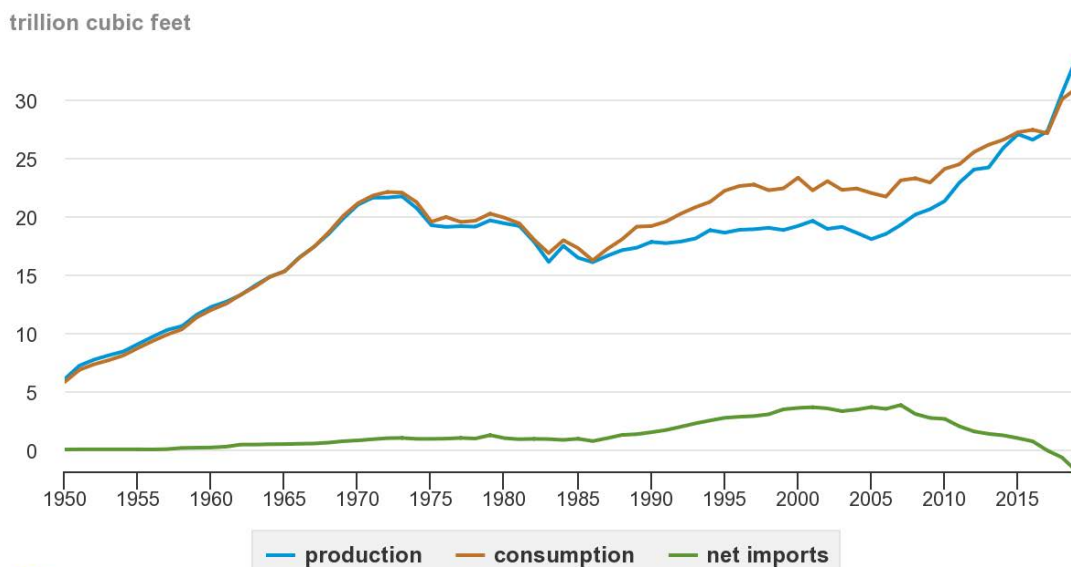
[Act.](#) Twenty-four states have since [introduced](#) bills with similar text to the ALEC model, often created directly by oil and gas interests, and 13 have already passed versions of it. A federal version was even proposed in June 2019, titled the [“Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019.”](#)

The growing prevalence of these ALEC-inspired “Critical Infrastructure Protection” laws demonstrates how state legislatures and fossil fuel lobbyists are anticipating the possibility of future protests utilizing Standing Rock as a model of successful resistance.

Rather than treating the Dakota Access Pipeline as an isolated issue, Lakota Sioux water protectors spearheaded a moment of historical convergence, resulting in a coalition of Indigenous activists, racial justice groups, and non-native environmental activists against corporate fossil fuel polluters nationwide. The Indigenous-led movement differs from the type of ecological activism that environmentalists are typically associated with. It centers the effects of environmental injustices on Indigenous tribes, low-income communities of color, and other marginalized demographics.

Growing resistance to fossil fuel infrastructure projects has coincided with a steady increase of oil and gas production in the United States throughout the past 15 years. Instead of advancing the necessary shift to renewable resources, both the Obama and Trump administrations sought to decrease foreign oil and gas imports and increase exports through expanded domestic fossil fuel extraction. In 2019, U.S. natural gas exports were the [highest on record](#) for the third year in a row.

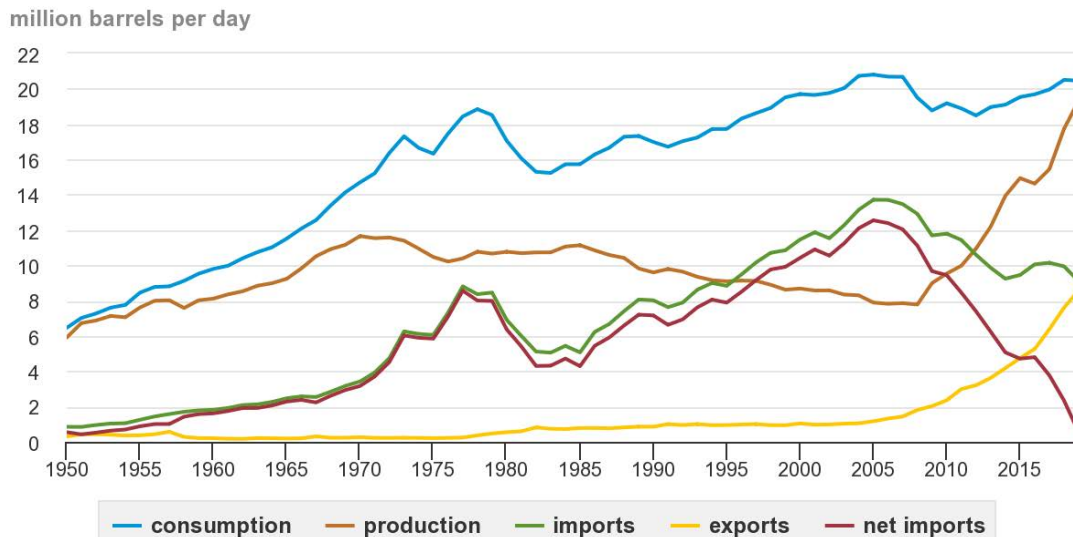
U.S. natural gas consumption, dry production, and net imports, 1950-2019



Source: U.S. Energy Information Administration, *Monthly Energy Review*, June 2020, preliminary data for 2019

Figure 1

U.S. petroleum consumption, production, imports, exports, and net imports, 1950-2019



Source: U.S. Energy Information Administration, *Monthly Energy Review*, Table 3.1, March 2020, preliminary data for 2019

As U.S. fossil fuel companies compete to break records in domestic oil and gas production, Black, Indigenous, and highly impoverished communities are bearing the consequences. Fossil fuel extraction, refinement, and transportation [disproportionately](#) takes place in, or in close proximity to, these [disadvantaged communities](#) and perpetuates various health problems ranging from cancer to respiratory illnesses.

When they organize to resist these exploitative enterprises, locals are often met with fierce legal and police repression championed by the powerful, well-funded interests they aim to challenge. This report focuses on projects overseen by three oil and gas pipelines in particular: Energy Transfer's Bayou Bridge Pipeline, Enbridge Line 3, and the EQT Corp's Mountain Valley Pipeline.

What are "Critical Infrastructure Protection" laws?

The language used in laws and discussions pertaining to "Critical Infrastructure Protection" originated in a government call to action dating back to the Clinton Administration. In response to the bombing of a federal building in Oklahoma City, President Bill Clinton created the [President's Commission on Critical Infrastructure Protection \(PCCIP\)](#) to improve the government's ability to protect the country's critical infrastructure such as roads and bridges from terrorist attacks. The 9/11 attacks on

the World Trade Center reinforced the urgency of this task for policymakers, many of whom addressed security concerns by fostering cooperation between the public and private sector.

In 2003, corporate lobbyists from various industries disseminated a [guide](#) to state officials arguing for heightened criminal penalties as a way to discourage terrorists from attacking “Critical Infrastructure” sites. The report, which was funded by energy and chemical interests such as BP and Dupont, includes a section on protecting fossil fuel infrastructure. Ideas used in both the ALEC model bill, and the 2017 Oklahoma law on which it is based, can be traced back to this guide.

The language in these laws demonstrates how oil and gas lobbyists have weaponized the policy goal of “Critical Infrastructure Protection,” something that was originally meant to combat the threat of domestic and foreign terrorist attacks, to criminalize environmental activists for engaging in non-violent resistance against hazardous projects.

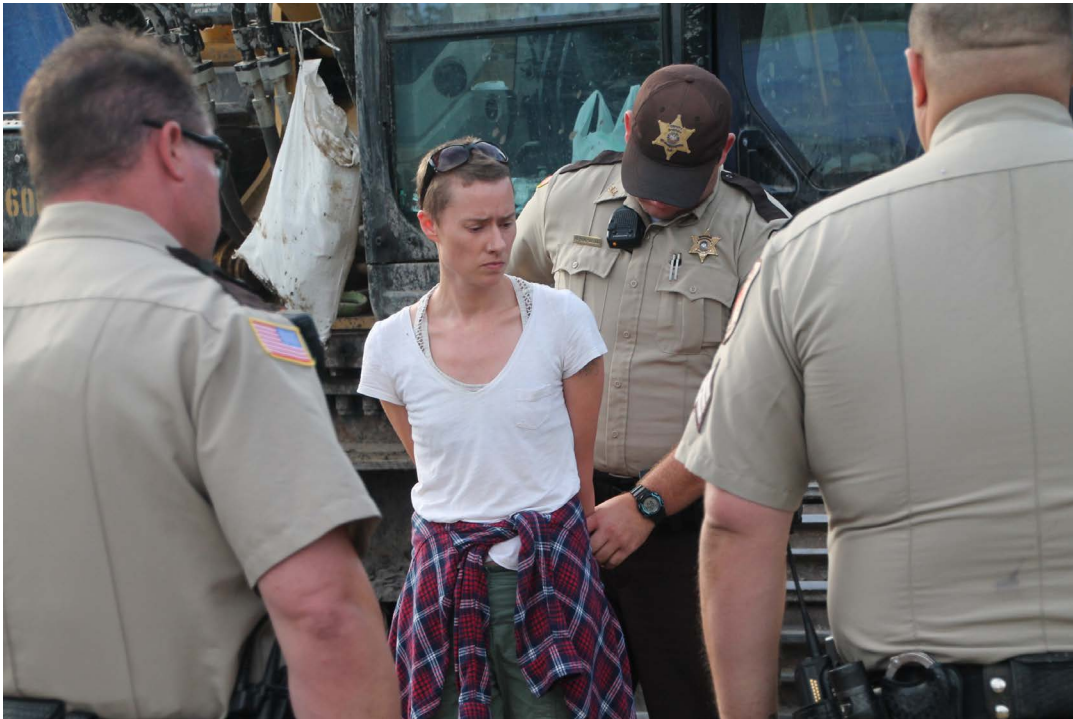


Photo courtesy of the Louisiana Bucket Brigade

In these instances, “Critical Infrastructure” is not only a euphemism for pipeline polluters that extract resources from surrounding communities for private interests, but it is also a dog-whistle that conflates local opposition with terrorism. In practice, these laws only serve to protect the corporate polluters’ interests and fossil fuel infrastructure, while threatening the constitutional rights of local opposition who ironically view them as unlawful threats to their communities.

Status of Anti-Protest Laws in Three States

Louisiana, Minnesota, and West Virginia all have either passed or introduced various versions of “Critical Infrastructure Protection” laws with language mimicking the ALEC Model Bill.

Louisiana

Louisiana House Bill 727 Session: 2018 Regular	ALEC Model Bill: Critical Infrastructure Protection Act
<u>§61. Unauthorized entry of a critical infrastructure</u> (1) "Critical infrastructure" shall include [...] chemical manufacturing facilities, refineries, electrical power generating facilities, electrical transmission substations and distribution substations, water intake structures and water treatment facilities, natural gas transmission compressor stations, liquified natural gas (LNG) terminals and storage facilities, natural gas and hydrocarbon storage facilities, and transportation facilities, such as ports, railroad switching yards, pipelines, and trucking terminals, or any site where the construction or improvement of any facility or structure referenced in this Section is occurring.	<u>Section 1. {Definitions.}</u> B. "Critical infrastructure facility" means: a. A petroleum or alumina refinery, b. An electrical power generating facility, substation, switching station, electrical control center or electric power lines and associated equipment infrastructure, c. A chemical, polymer or rubber manufacturing facility, d. A water intake structure, water treatment facility, wastewater treatment plant or pump station, e. A natural gas compressor station, f. A liquid natural gas terminal or storage facility, h. A port, railroad switching yard, railroad tracks, trucking terminal or other freight transportation facility,
<u>§61.1. Criminal damage to a critical infrastructure</u> A. Criminal damage to a critical infrastructure is the intentional damaging of a critical infrastructure [...] B. Any person who commits the crime of criminal damage to a critical infrastructure shall be imprisoned with or without hard labor for not more than fifteen years, fined not more than ten thousand dollars, or both.	<u>Section 2. {Criminal Penalties.}</u> A. Any person who shall willfully and knowingly trespass or enter property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than {dollar figure}, or by imprisonment in the county jail for a term of {length of time}, or by both such fine and imprisonment.

Figure 3

Two years ago, Representative Major Thibaut introduced Louisiana’s active critical infrastructure bill, [HB 727](#), during the Bayou Bridge’s “phase 2” of construction. Tyler Gray, president and general counsel of the Louisiana Mid-Continent Oil and Gas Association, [drafted the bill](#). Previously, Gray served as an attorney in the Department of Natural Resources, Office of Conservation from 2012 until 2014.

Passing through the Louisiana legislature with near-unanimous support, HB 727 targets pipeline protests by including gas and oil pipelines in the state’s “Critical Infrastructure” definition and specifies the “unauthorized entry of a critical infrastructure” as a felony.

Like the ALEC model bill, the law penalizes “trespassers” with a fine, imprisonment, or both. However, the law in some ways goes beyond what the ALEC bill calls for as it specifies that people who did not participate in protests, damages, or harming anything, may be liable for associating with protestors.

During spring 2020, legislators advanced another, enhanced “Critical Infrastructure” bill, increasing charges of HB 727 during a state of emergency. The new bill, [HB 197](#), would have also added “water control structures, including floodgates or pump stations” to the state definition of “Critical Infrastructure” in Louisiana, making it even more compliant with the ALEC bill’s recommended definitions. This would have further limited the universe of places where protests could be exempt from felony trespassing charges as the aforementioned water control structures are very common throughout the bayou regions.

Louisiana House Bill 197 Session: 2020 Regular	ALEC Model Bill: Critical Infrastructure Protection Act
<u>§61. Unauthorized entry of a critical infrastructure</u> (1) "Critical infrastructure" means [...] electrical power generating facilities, electrical transmission substations and distribution substations, water intake structures and water treatment facilities, natural gas transmission compressor stations, liquified natural gas (LNG) terminals and storage facilities, natural gas and hydrocarbon storage facilities, transportation facilities, such as ports, railroad switching yards, pipelines, and trucking terminals, water control structures, including floodgates or pump stations, or any site where the construction or improvement of any facility or structure referenced in this Section is occurring	<u>Section 1. {Definitions.}</u> B. "Critical infrastructure facility" means: b. An electrical power generating facility, substation switching station, electrical control center or electric power lines and associated equipment infrastructure, d. A water intake structure, water treatment facility, wastewater treatment plant or pump station, e. A natural gas compressor station, f. A liquid natural gas terminal or storage facility, h. A port, railroad switching yard, railroad tracks, trucking terminal or other freight transportation facility, n. A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections,
<u>§61.1 Criminal damage to criminal infrastructure</u> (2) Whoever commits the crime of unauthorized entry of a critical infrastructure during the existence of a state of emergency, which has been declared pursuant to law by the governor or the chief executive officer of any parish, may be fined not more than five thousand dollars and shall be imprisoned at hard labor for not less than three years nor more than fifteen years.	<u>Section 2. {Criminal Penalties.}</u> A. Any person who shall willfully and knowingly trespass or enter property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than {dollar figure}, or by imprisonment in the county jail for a term of {length of time}, or by both such fine and imprisonment.

Figure 4

HB 197 was introduced by Representative Jerome Zeringue and swiftly passed the state House and Senate with near-unanimous support, but was vetoed by Governor John Bel Edwards. It is of little surprise that both of these ALEC-inspired bills passed through the state legislature facing little-to-no opposition, as corporate influences are especially significant within the Louisiana state government. According to a [2018 Common Cause Report](#), the year HB 727 was passed, nearly 50 members of the Louisiana Senate and House of Representatives had ties to ALEC.

Minnesota

Minnesota Senate Bill 3463 90th Legislature (2017-2018)	ALEC Model Bill: Critical Infrastructure Protection Act
<u>Section 1. [604.135] CRITICAL INFRASTRUCTURE; JOINT AND SEVERAL LIABILITY.</u> (a) A person who is convicted of trespass under section 609.6055 or damage to property under section 609.594, or is arrested for a violation of one or both of those sections and convicted of another offense arising out of the same behavioral incident, may be held liable for any damages to personal or real property committed by the person while trespassing or causing damage to property. (b) A person or entity that knowingly recruits, trains, aids, advises, hires, counsels, conspires with, or otherwise procures another for the purpose of trespassing or causing damage to property as described in paragraph (a).	<u>Section 3. {Civil Penalties.}</u> A. Any person who is arrested for or convicted of trespass may be held liable for any damages to personal or real property while trespassing. B. Any person or entity that compensates, provides consideration to or remunerates a person for trespassing as described in subsection A of this section may also be held vicariously liable for any damages to personal or real property committed by the person compensated or remunerated for trespassing.
<u>Sec. 2. Minnesota Statutes 2016, section 609.6055, subdivision 2</u> (c) Unless a greater penalty is provided elsewhere, whoever violates this section with intent to damage, destroy, or tamper with equipment, or significantly impede or inhibit operation, is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.	<u>Section 2. {Criminal Penalties.}</u> A. Any person who shall willfully and knowingly trespass or enter property [...] If it is determined the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility, the person shall, upon conviction, be guilty of a felony punishable by a fine of not less than {dollar figure}, or by imprisonment [...] for a for a term of {length of time}, or by both such fine and imprisonment.

Figure 5

From 2018 through 2020, four “Critical Infrastructure” anti-protest bills were introduced in the Minnesota state legislature with the same penalties for protesting fossil fuel facilities. These bills were responding to opposition against the Enbridge Line 3 replacement project in northern Minnesota.

None have been adopted into law, but the first, [SF 3463](#), passed both the House and the Senate by narrow margins before being vetoed by Governor Mark Dayton in May 2018. Notably, the bill went beyond the ALEC model by creating felony charges for anyone who “recruits, trains, aids, advises, hires, counsels, or conspires with” a person who significantly damages “Critical Infrastructure.” Sponsors of this proposal had clear intentions. Pat Garofalo, one of the bill’s House sponsors, is the [ALEC State Chair for Minnesota](#), and the bill’s main sponsor, Paul Utke, pointed to Standing Rock as the bill’s inspiration. “We saw what happened in North Dakota and we have a big pipeline project coming up [in Minnesota],” [he said](#).

The next bill, [SF 2011](#), was introduced in March 2019 with Utke again as a lead sponsor. Like the previous bill, it would make entering sites with fossil fuel facilities punishable by a fine and imprisonment. SF 2011 currently remains in the Judiciary and Public Safety Finance and Policy Committee awaiting a vote. A similar bill to SF 2011, [HF 2966](#), was introduced in the House 10 months later in January 2020.

In February 2020 the 4th bill, [HF 3668](#), was introduced. This bill has the same ALEC-inspired anti-protest penalties along with measures to hold supposed co-conspirators of such activities liable, as in [SF 3463](#).

West Virginia

West Virginia House Bill 4615 Session: 2020 Regular	ALEC Model Bill: Critical Infrastructure Protection Act
(a) This section may be referred to as the "West Virginia Critical Infrastructure Protection Act". "Critical infrastructure facility" means [...] (14) A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural gas transmission facility, or a natural gas utility distribution facility, or (15) A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility. (2) Any person who willfully damages, destroys, vandalizes, defaces or tampers with equipment in a critical infrastructure facility is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.	<u>Section 1. {Definitions.} For purposes of this Act:</u> B. "Critical infrastructure facility" means: m. [...] A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, aboveground piping, a regular station and a natural gas storage facility, or n. A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below or aboveground pipeline or piping and truck loading or offloading facility; or <u>Section 2. {Criminal Penalties.}</u> 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 [...] } for a term of not more than {length of time}, or by both such fine and imprisonment.

Figure 6

West Virginia Delegate John Kelly introduced [HB 4615](#), the West Virginia Critical Infrastructure Protection Act, in January 2020, and it was signed into law only two months later. The law shares all the same hallmarks of the ALEC model bill, making trespassing on property containing "Critical Infrastructure" a felony charge carrying a fine and a prison sentence, as well as holding any person or organization vicariously liable for "conspiring" to damage the property. It also details definitions of "Critical Infrastructure," which include fossil fuel facilities such as oil refineries, gas terminals, and pipelines, among others. Of all the versions of "Critical Infrastructure" legislation reviewed in this section, the West Virginia Critical Infrastructure Protection Act mimics the ALEC model bill most closely.

The Role of Fossil Fuel Political Funding

Despite the fact that these laws may be largely unpopular with their local constituency, state officials will support these laws if they support the oil and gas projects that they protect. The fossil fuel industry has the resources to fund an army of lobbyists and make boundless donations to the campaigns of state officials. Furthermore, ALEC is a powerful lobbying force in and of itself, boasting thousands of members in state legislatures across the country. Members [attend lavish, vacation-esque multi-day conferences](#) where corporate lobbyists wine and dine them. What is most perverse is that these ALEC conferences do not fall under the legal definition of “lobbying.” As a result, they typically go undocumented, and the lobbyists are not registered by the state. Unless they have leadership positions within the organization, it is not always public information whether a legislator is a member of ALEC or not. That said, their affiliation usually becomes obvious when legislators introduce ALEC-inspired legislation given that the textual similarities remain. Campaign finance information coupled with the type of legislation state officials support will often reveal whether they are serving the interests of local constituents, or powerful, extractive corporations.

Louisiana

Following a surge in community protests against the Bayou Bridge Pipeline in the winter of 2018, the Louisiana state legislature eagerly advanced its first “Critical Infrastructure” bill, HB 727. After nearly unanimous votes were cast in both the [House](#) and [Senate](#), the bill reached the governor’s desk only two months after its introduction.

Representative Major Thibaut, who introduced the bill, received \$6,600 in [campaign contributions](#) from the oil and gas industry during the prior election cycle in 2015. Notably, his largest contributions came from ExxonMobil and LOGPAC, one of the Louisiana Oil and Gas Association’s Political Action Committees (PACs). According to [data collected by Greenpeace](#), ExxonMobil is one of the most active lobbyists for state “Critical Infrastructure” anti-protest laws. Furthermore, the President of the Louisiana Oil and Gas Association, Tyler Gray, drafted HB 727 and [publicly advocated](#) for its passage.

Governor John Bel Edwards is an [ALEC Alum](#) and had taken \$94,750 in [donations](#) from the oil and gas industry in 2015, which is more than he had taken in any prior election. The PAC of the Bayou Bridge Pipeline’s owner, Energy Transfer, donated \$6,000.

Two years following the passage of HB 727, Representative Jerome Zeringue introduced HB 197 to increase protest penalties and expand the definition of “Critical

Infrastructure.” Again, the Louisiana legislature was clear in its support of criminalizing protests, passing the measure almost unanimously in both chambers. A [couple of narrow technicalities](#) led Governor Edwards to veto the bill, but since he had no objection to the overall thrust of the legislation, there is a strong chance that a slightly revised version could sail through in the next legislative session.

Representative Zeringue’s 2019 campaign was well-financed by major fossil fuel companies that have been explicit in their support for “Critical Infrastructure” laws. With the [oil and gas industry](#) dominating his donor list, the three most active lobbyists for these anti-protest laws, Marathon Petroleum, [Koch Industries](#), and ExxonMobil, each donated to his campaign. Phillips 66 Company, a stakeholder in the Bayou Bridge Pipeline, also donated \$1,001. Other notable contributors came from MC-PAC and LOGPAC, both Louisiana Oil and Gas Association PACs. Donations from oil and gas interests alone totaled to \$12,066.

Minnesota

Each of the four “Critical Infrastructure Protection” bills introduced in Minnesota since 2018 had several authors. The first of these bills, SF 3463, had 18 different authors, 5 Senators and 13 Representatives. Representative Pat Garofalo, the [ALEC State Chair for Minnesota](#), was one of the bill’s authors.

A year after SF 3463 was vetoed by then-Governor Mark Dayton, and after he was succeeded by current Governor Tim Walz, a new version of the bill, SF 2011, was introduced by five Senators, four of whom were authors of the previous anti-protest law. Environment and Natural Resources Finance Committee Chair Bill Ingebrigtsen, who backed both versions of the bill, had previously pushed through a [plan to cut](#) environmental and natural resource maintenance and protections by \$40 million dollars and regularly takes campaign donations from the [Northwest Petroleum PAC](#). Senator David J. Tomassoni, ranking minority member of the Environment and Natural Resources Finance Committee, has spent a large chunk of his career attempting to [open up Minnesota to mining expansion](#) in the face of protests from [local environmentalist groups and Indigenous tribes](#). During the 2020 election cycle, his campaign has received large contributions from corporate-friendly law firms that work for clients in the fossil fuel industry, such as [Dorsey & Whitney LLP](#) and [Stinson Leonard](#), and the local petroleum industry also [regularly donates to his campaigns](#).

SF 2011 has not yet been scheduled for a vote as it has remained in the Judiciary and Public Safety Finance and Policy Committee since its introduction. A year later HF 2966, a nearly identical bill to SF 2011, was introduced by four House legislators, one of whom, Representative [Matt Grossell](#), had recently taken donations from [Pine](#)

[Bend PAC](#), a Political Action Committee for the Koch Industries-owned [Flint Hills Petroleum Refinery](#), and Stinson Leonard. Grossell had also taken donations from a [lobbyist](#) for Enbridge, the owner of the Line 3 Pipeline project and a [top lobbyist](#) for anti-protest legislation. Another bill author, Representative [Shane Mekeland](#), received donations from Northwest Petroleum PAC in his most recent campaign. This bill has also remained in Committee since its introduction on February 11th, 2020.

The most recent “Critical Infrastructure Protection” bill to be introduced in Minnesota, and one of the most punitive, was introduced only 13 days after HF 2966 on February 24, 2020. Five of the six authors, Representatives Lueck, McDonald, Daniels, Nelson, and Novotny also authored some of the previous anti-protest bills.

West Virginia

Just a month before Dominion and Duke Energy terminated their Atlantic Coast Pipeline plan, HB 4615 was activated. Introduced by Delegate John Kelly in January 2020, the bill was passed in the House in a [67-33](#) February vote, and then in the Senate on March 7 by a [21-13](#) margin. West Virginia Governor Jim Justice signed it that same day.

Delegate Kelly had received \$1,000 in 2020 [campaign donations](#) from Dominion Energy, owner of the now-defunct Atlantic Coast Pipeline. [Greenpeace](#) ranks Dominion the 9th most active company lobbying for anti-protest laws in the country. The data [also shows](#) that the West Virginia Oil and Natural Gas Association, along with American Fuel and Petrochemical Manufacturers, lobbied for the bill’s passage in West Virginia.

Governor Jim Justice, a coal billionaire, received a total of \$21,000 in [donations](#) from the oil and gas industry alone during the 2020 election cycle. [Marathon Petroleum](#), one of the most active corporations lobbying for anti-protest laws, donated \$2,800 to his campaign. He also received a \$1,800 [donation](#) from Dominion PAC a month before HB 4615 reached his desk. Dominion’s lobbying investment may have aided the passage of the law, but it did not save their Atlantic Coast Pipeline project, which was cancelled in the face of high legal costs. However, the equally controversial Mountain Valley Pipeline project is moving forward as planned. EQT PAC, the PAC for EQT Corporation, which is overseeing the construction of the Mountain Valley Pipeline, had also [donated](#) \$2,500 to Governor Justice during this 2020 election cycle.

The Race and Class Dynamics of the Pipeline Fights Targeted by the Anti-Protest Laws¹

Closer examination of the demographic makeup of the census tracts within the paths of the Bayou Bridge, Line 3, and Mountain Valley pipelines reveal that these controversial projects are all built in close proximity to marginalized communities, namely communities of color and communities with high poverty rates.



Photo courtesy of the Louisiana Bucket Brigade

Bayou Bridge Pipeline Demographics

In 2016, Energy Transfer Partners LLP announced their joint-venture pipeline plan with Phillips 66 known as the Bayou Bridge Pipeline, which is the tail-end of the notorious

¹ All of the map graphics used in this section are based on 2018 American Community Survey 5-year estimates from the U.S. Census Bureau, and were generated with the data mapping software: [SocialExplorer](#). The individual maps could not be linked because the mapping service is only available by subscription.

Dakota Access Pipeline. Phase 1 connected Nederland, Texas to refineries in Lake Charles, Louisiana. Phase 2 of the Bayou Bridge Pipeline project extends eastward from Lake Charles, cutting through a waft of rural communities, streams, and wetlands in the Atchafalaya Basin, before reaching St. James Parish. A predominantly Black community, St. James Parish is located in what is known as “Cancer Alley,” an area along the Mississippi River that has experienced a [high volume of cancer deaths](#) linked to exposure to toxic industrial pollutants. The census tracts along the pipeline path have a poverty rate total of 12 percent. Although only 15 percent of the population in these communities are Black, 27 percent of them live in poverty. Black people living along the project’s path are most highly concentrated toward the end of the pipeline, in a high-risk area known as “Cancer Allev.”

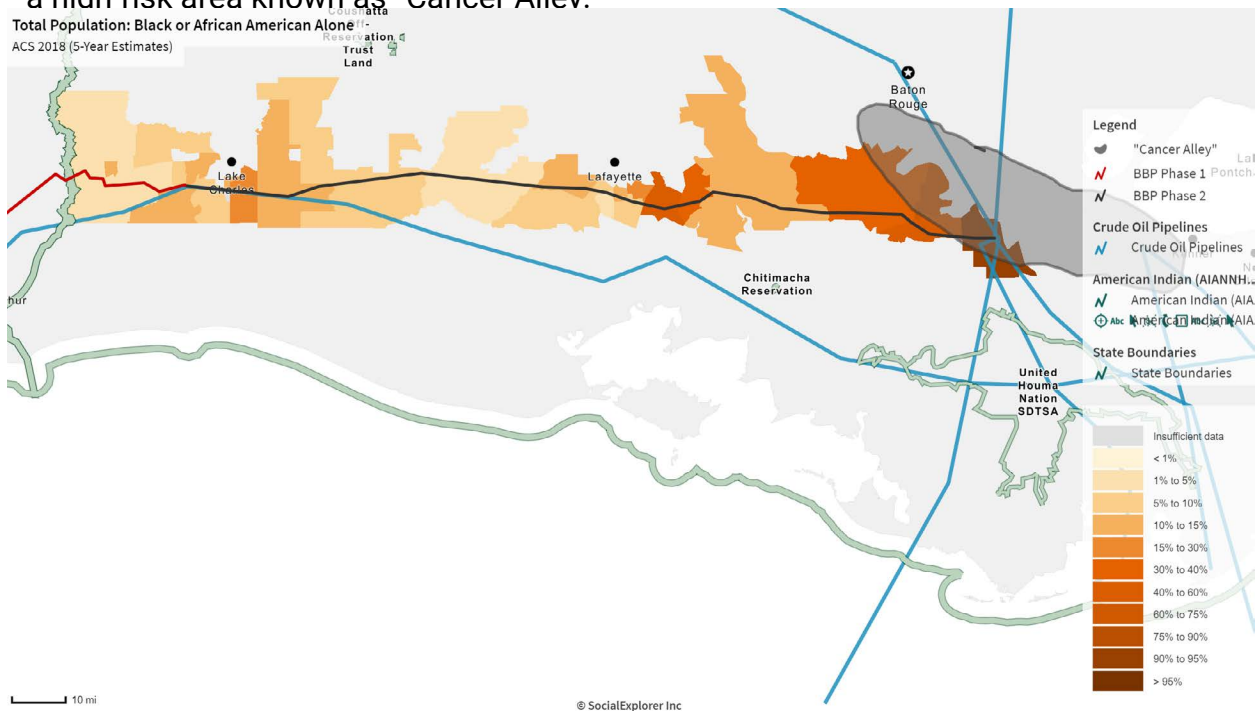


Figure 7

The tracts in “Cancer Alley” are also some of the most poverty-dense locations in the pipeline’s path. The final destination, St. James Parish, has a poverty rate of 29 percent.

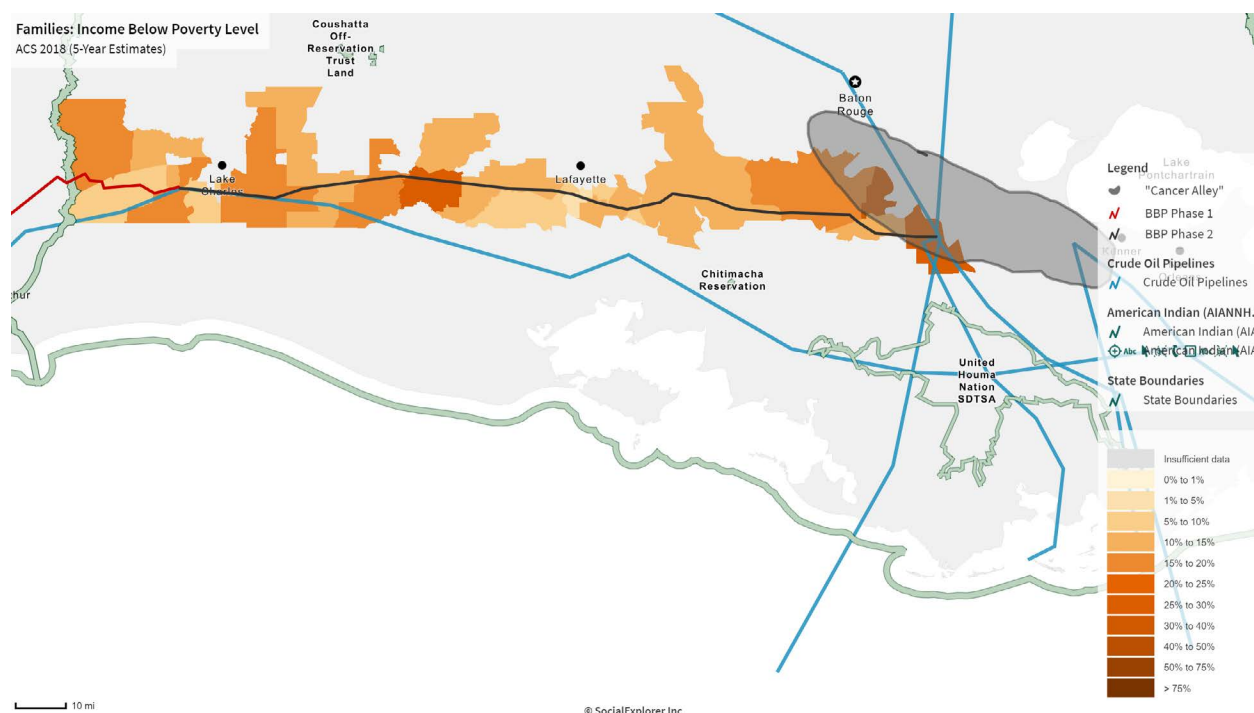


Figure 8

According to the U.S. Department of Housing and Urban Development's [Environmental Health Hazard Index](#), which "measures potential exposure to harmful toxins at a neighborhood level," the area toward the end of the pipeline project also has the highest concentration of harmful toxin exposure.² The entirety of the end portion of the Bayou Bridge Pipeline path receives Environmental Health Index scores ranging from 40-60, on a scale of 0-100 (with 100 being perfect environmental health quality). Overall, this area has a considerable exposure to harmful toxins. This is of little surprise, as the effects of toxic pollutants stemming from a high concentration of industrial plants and oil hubs in the "Cancer Alley" area is well documented. Notably, the Environmental Health Hazard Index improves toward the middle of the pipeline path, but then plummets significantly in the Lake Charles area, which is a major oil and [petrochemical hub](#).

² The Environmental Health Index uses a scoring system of 0-100, with 100 representing perfect environmental health quality and 0 representing the most hazardous toxin levels.

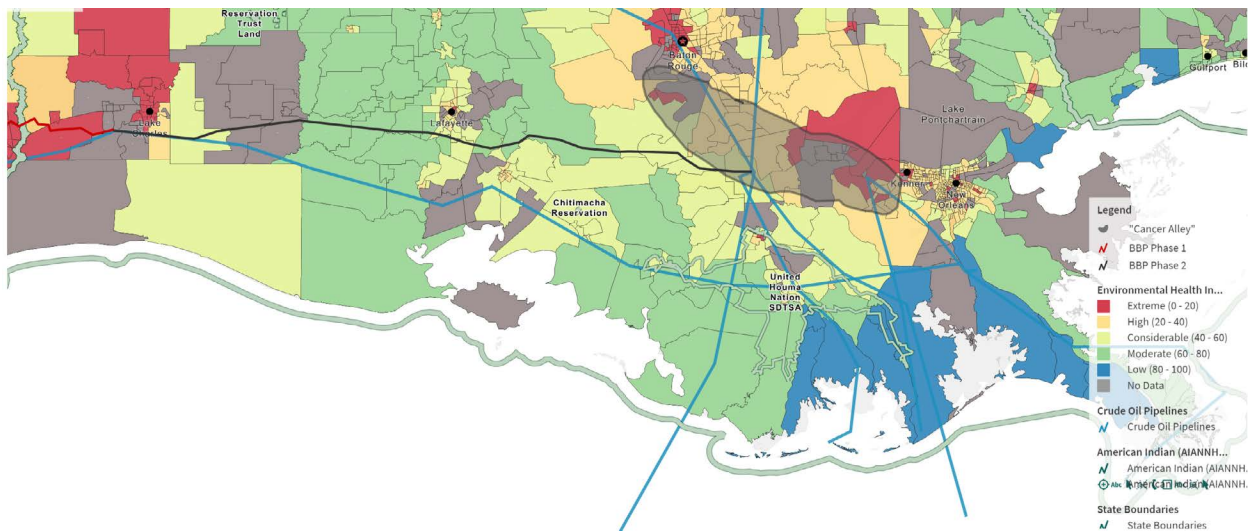


Figure 9

The Center For Disease Control's life expectancy estimates reveal that about a quarter of the communities in the Bayou Bridge Pipeline path have below-average life expectancies. Many of these tracts with lower life expectancies are located in the area known as "Cancer Alley," and are likely related to the area's low Environmental Health Index score. Tracts with higher African American populations also correlate with lower life-expectancy rates.

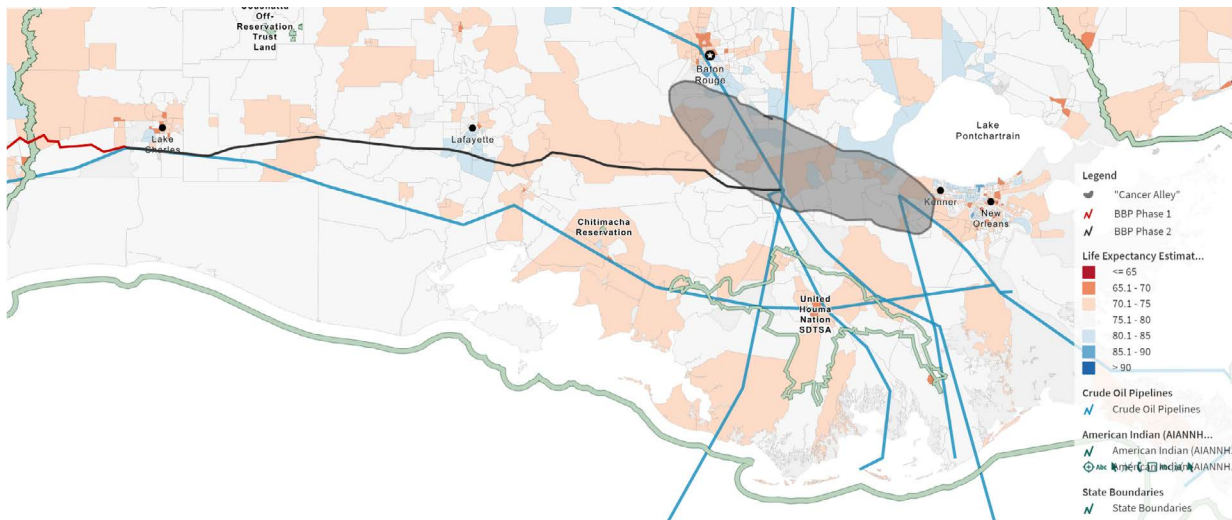


Figure 10

The overlapping trends along the pipeline route are characterized by high African American poverty rates, low Environmental Health Index scores, and low life expectancy rates. These trends are most dramatic toward the end of the pipeline in the general "Cancer Alley" area.

Line 3 Pipeline Demographics

Enbridge's Line 3 replacement project is in motion to replace an existing pipeline that transports crude oil from Canada to Superior, Wisconsin. The original pipeline, built in the 1960s, cuts across two American Indian reservations in northern Minnesota. The replacement project circumvents official tribal territories, and the original Line 3 route is in the process of being decommissioned. However, the replacement path still cuts through regions that the Ojibwe traditionally use for [harvesting wild rice](#).

According to the U.S. Census Bureau, the tracts along the pipeline path have a total poverty rate of 8 percent. However, a striking 37 percent of American Indians recorded in these tracts live in poverty. Notice how the portions of the pipeline's path with the highest poverty rates are those that are closest to American Indian territories.

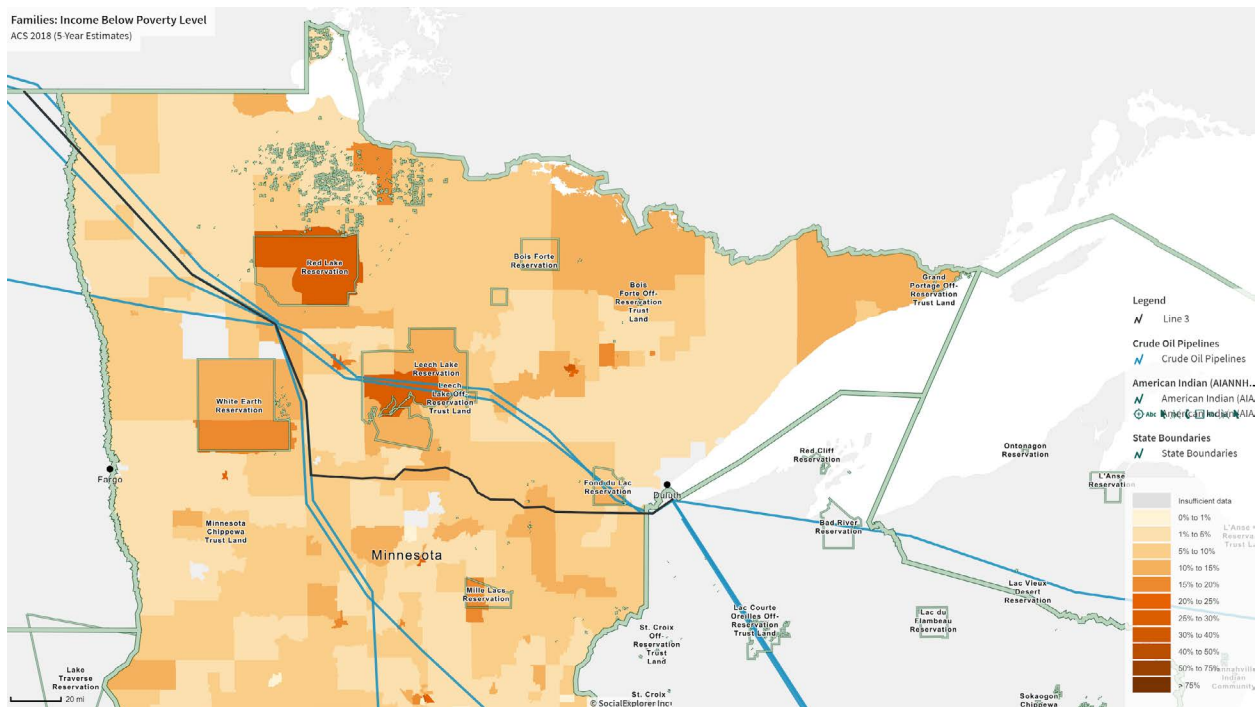


Figure 11

Mountain Valley Pipeline Demographics

The Equitrans Mountain Valley Pipeline joint-venture is a natural gas pipeline proposed to span 303 miles from Wezel County, West Virginia to Pittsylvania County, Virginia. The majority of the pipeline path cuts through rural Appalachian communities. The stakeholders of the project are Consolidated Edison, EQT Midstream, and various other midstream partners.

The West Virginian census tracts in the pipeline's path have a total poverty rate of 15 percent, which is decisively higher than the [national poverty rate](#) of 11.8 percent.

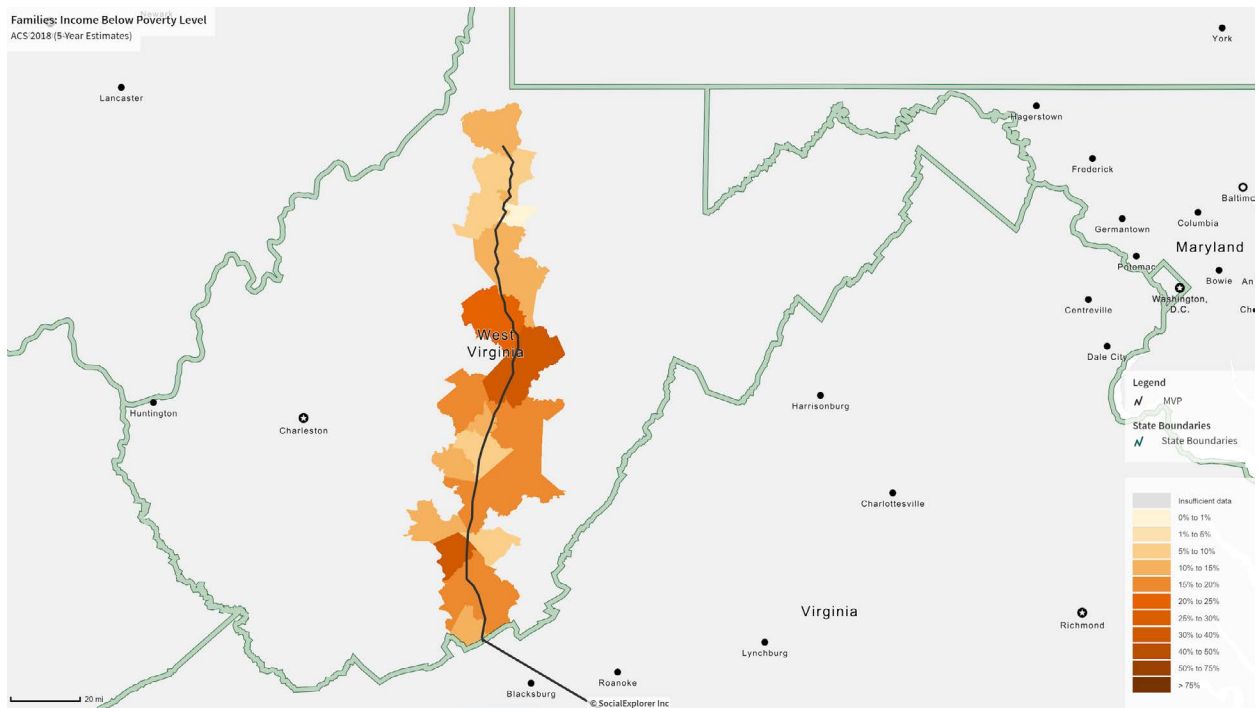


Figure 12

Half of the tracts in the Mountain Valley Pipeline's prospective path consist of communities with below the [national life expectancy average](#) of 78.6 years. One tract in west Harrison County, toward the beginning of the pipeline, has a life expectancy of less than 65 years. Salem, the largest city in this area, which the pipeline path skims, has [the lowest average life expectancy](#) in all of North Central West Virginia. Residents there are only expected to live an average of 63 years.

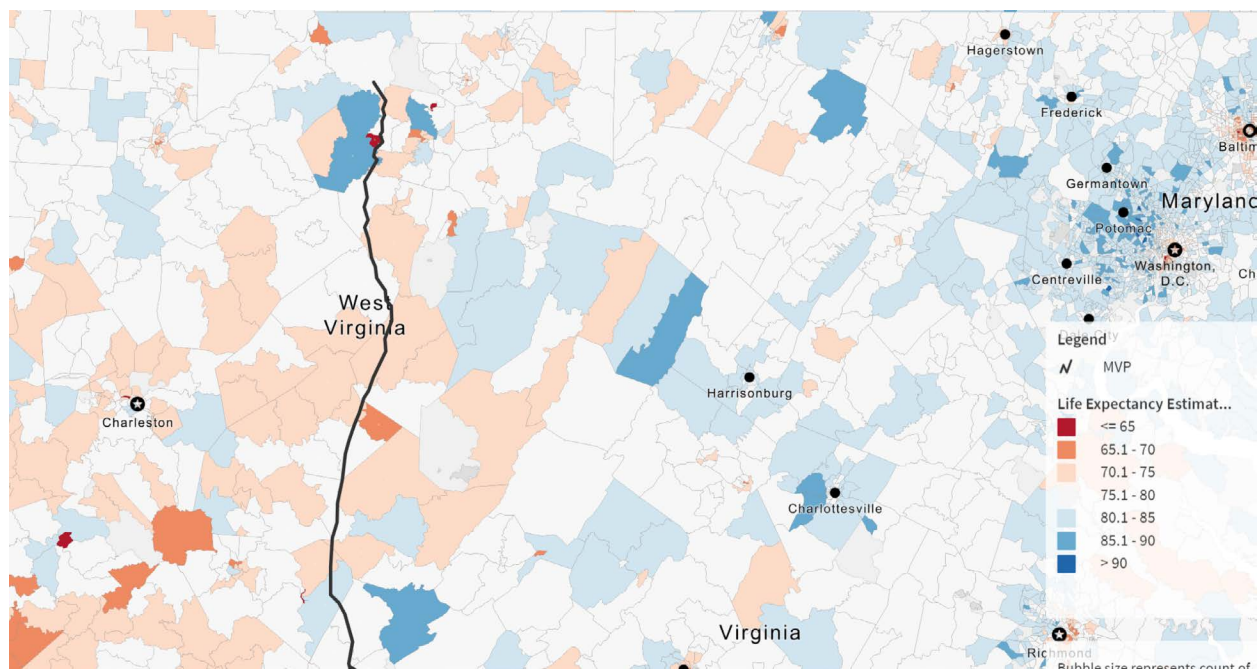


Figure 13

The West Virginian communities along the Mountain Valley Pipeline's projected path experience both low life expectancies and high levels of poverty, with the middle of the path exemplifying this trend most consistently.

Local Concerns Fueling Protests

Not only do these pipelines export the costs of pollution exposure onto the communities they are built in, they also alter the landscapes in ways that threaten the homes, safety, and traditional ways of life for residents.

Louisiana: Crawfish, Cancer Alley, and Clean Water

Residents in the Atchafalaya Basin, the largest U.S. wetland, have a history of resisting the construction of pipelines, chemical plants, and other polluting projects in their backyards. While state officials argue that these projects benefit communities by creating jobs, locals have learned not to trust that the presumed benefits outweigh the costs. Activists in southwest Louisiana are weary of these justifications from their state officials who, in the same breath, support [programs](#) exempting these facilities from paying local taxes.

While proponents of the project advertised how many construction jobs it would create, most of the jobs created by the Bayou Bridge project are temporary construction positions, with its permit having anticipated the creation of [just 12 permanent jobs](#). Furthermore, many of the communities around the pipeline path, and “Cancer Alley” residents in particular, are all too familiar with the consequences of corporate environmental violations impacting the health of locals. Even if the pipeline provided more permanent jobs to locals, a moral dilemma still remains; workers would be forced to pollute their own communities to feed their families. The sacrifice would include destroying and flooding coastal wetlands, polluting the air with toxins like benzene, and dotting a National Heritage Area with pits of refinery waste.

A concern of the predominantly Black, rural communities in the [“Cancer Alley”](#) neighborhood, an oil and gas hub, is that since they only have one street exiting their towns in case of an emergency, they are exceptionally vulnerable to dangerous pipeline malfunctions. Of all the communities the oil and gas industry have harmed in this region, the Black communities have shouldered a disproportionate amount of the costs. An alarming number of residents of Cancer Alley have already suffered health impacts from industrial sites emitting toxic pollution in the area. The Black communities along the Bayou Bridge Pipeline path are also the most impoverished demographic, with a 27 percent poverty rate. Both the oil hubs at both ends of the Bayou Bridge Pipeline, St. James Parish in “Cancer Alley,” and Lake Charles, are predominantly Black communities with high exposures to environmental toxins, as seen from the Environmental Index data in Figure 9.

Many other communities in close proximity to the pipeline path also rely on healthy swamps and bayou lands to preserve their ways of life, ranging from Cajun crawfishermen to the United Houma Nation. Crawfishermen identify pipeline projects as the cause of [declining crawfish populations](#), as they leave behind spoil banks that destroy crawfish habitats. Residents of the United Houma Nation are [concerned](#) that pipeline spills will contaminate their drinking water and irreversibly damage the bayou habitat. More than 300,000 residents rely on Bayou Lafourche for water in Houma territory. Energy Transfer, the pipeline's owner, has a particularly concerning spill and leak [record](#). Another issue concerning all residents of the region is flooding. Pipelines in the area have perpetuated Louisiana's coastal erosion crisis to the point where the city of New Orleans [sued](#) pipeline companies for damages. Multiple pipelines running through the region harm the delicate grading of wetlands, and many environmentalists and local residents [allege](#) that, over the years, various pipeline companies have failed to keep their promises to restore the land.

Due to the area's documented experiences with chemical and fossil fuel industry expansion, local activist organizations had already been formed and were quickly reoriented toward mobilizing against the Bayou Bridge Pipeline project. [Louisiana Bucket Brigade](#), a local conservation group, was a leader in spearheading a coalition of these local organizations. Together, they successfully petitioned the Louisiana government to deny a permit for TigerSwan, a private security company involved in [violent crackdowns and antiterrorism-style surveillance](#) of demonstrators at Standing Rock.

[Atchafalaya Basinkeeper](#), an organization that protects the wetlands in southern Louisiana and a member of the anti-pipeline coalition, gathered thousands of signatures for the Army Corps of Engineers to conduct an environmental impact survey of the project. Prior to producing an environmental impact statement, the Corps granted the pipeline permit on the condition that they halt construction during times of "high-water" events. In response, Atchafalaya Basinkeeper and several other organizations [sued](#) the Corps for issuing the permit before producing an environmental impact statement, which, they argued, was a violation of the National Environmental Policy Act (NEPA). A District Court ruled that the Bayou Bridge Pipeline must halt its construction. However, the 5th Circuit Court vacated this ruling after Energy Transfer appealed.

Anti-pipeline activists, in collaboration with Houma tribal leaders, had [purchased land](#) in the pipeline construction path. There, they built an occupier camp named [L'eau Est La Vie](#) to allow activists to monitor the pipeline's construction for violations. Along with other landowners, they have challenged Bayou Bridge construction on their properties in court. Families with property in the path cited intimidation tactics the company employed to bully landowners into signing away easements to Bayou Bridge LLC. The company would threaten to sue landowners who refused to sell them cheap

land easements under their claim to eminent domain, something that a private for-profit company does not have the authority to do. Only after landowners filed their trespassing lawsuit did the company start legal proceedings for eminent domain.

So far, two courts have [imposed fines](#) on the company after declaring that they had unlawfully trespassed on private property, yet have allowed construction to continue. These confusing, contradictory rulings attempt to reconcile the property rights of landowners with Bayou Bridge LLC's right to eminent domain after they had properly filed the proceedings for it. In response to the legal battle and months of negative press, Energy Transfer rerouted the Bayou Bridge Pipeline path to leave out property owned by the L'eau Est La Vie camp. Activist groups involved in the lawsuit have been using the case to amplify the issue of private companies abusing eminent domain.

Outside of the court, the anti-pipeline coalition had organized several small-scale [public protests](#) of the pipeline construction sites. Tactics involved protestors blocking construction trucks, chaining themselves to the pipeline sites, and dressing up in crawfish costumes to evoke the project's threat to crawfish habitats in the Atchafalaya Basin.

Minnesota: Indigenous Land Rights

Enbridge's Line 3 replacement triggered vehement resistance from activists worried about the project increasing state reliance on fossil fuels and perpetuating the climate crisis, from local residents worried about potential spills after experiencing the [largest inland oil spill](#) in U.S. history caused by the same company, and from Indigenous land and water protectors concerned about the pipeline's threat to treaty-protected rights to hunt, fish, and forage wild rice. Together, these groups organized a campaign known as [Stop Line 3](#), which included public demonstrations to increase awareness of the dangers of tar sands and petroleum industry expansion. The Minneapolis-based Indigenous group, Honor The Earth, also opposed the replacement project in their [Welcome Water Protectors Campaign](#), a six-year-old campaign against Enbridge's pipeline expansion in the region.

Minnesota Ojibwe and Chippewa tribal communities would be most directly affected by this pipeline project, as its path is in close proximity to several of their reservation lands in northern Minnesota. Although it does not penetrate the boundaries of any reservation, the tribal communities contest its threat of contaminating their drinking water as well as wild rice regions sacred to the Ojibwe.

Indigenous activists have also raised concerns about pipeline construction bringing ["man camps"](#) of workers from outside of the communities threatening the safety of

Indigenous women and girls. It is known from the [Bakken oil boom](#) that “man camps” increase sexual violence against women and girls, which has severe implications for the surrounding Native communities where women and girls are disproportionate targets of these offenses. According to [Amnesty International](#), “Native women are also 2.5 times more likely to be raped than non-Native women in the U.S. with nearly 86 percent of rapes perpetrated by non-Native men.” [Chapter 11](#) of the environmental impact statement for the Line 3 replacement responds to these concerns, claiming that Enbridge can be trusted to prevent this issue:

“To address the potential for sexual abuse or sex trafficking, Enbridge can fund or prepare and implement an education plan or awareness campaign around this issue with the companies and subcontractors it hires to construct, restore and operate the pipeline. Enbridge can also provide funding to local and tribal law enforcement to identify and stop sex trafficking.”

After Enbridge publicized the [deactivation](#) of its original Line 3, which cuts through Leech Lake Ojibwe land, and announced its replacement, Honor The Earth [rejected the premise](#) that this was some sort of an environmentally conscious alternative. Further, Honor The Earth argues that Enbridge is leaving behind a mess that will cause significant water damage through contamination and unnatural drainage, and that the new pipeline will only exacerbate similar issues in the greater watershed area. The new Line 3 project not only creates a new destructive path in the northern Minnesota watershed habitat, but will be much larger than its predecessor. In fact, Enbridge [boasts](#) that the replacement project will be the largest in the company’s history, carrying nearly twice the volume of the pipeline they are abandoning in Leech Lake Reservation territory.

Honor The Earth likened Minnesota Public Utility Commission’s decision to issue a permit for the pipeline to having [“declared war on the Ojibwe”](#) due to the project’s threat to their way of life. For them, wild rice harvesting is a matter of [preserving their cultural identity](#) and protecting their treaty-protected lands.

Since the Minnesota Pollution Control Agency issued construction permits in [February](#) 2020, Native and non-Native activist organizations such as Twin Cities Democratic Socialists of America, the Sunrise Movement, and many others have organized rallies and protests in Minneapolis. The goal of the demonstrations is to push Governor Tim Walz to block the project. After the Minnesota Public Utilities Commission [denied](#) petitions for reconsideration of the project in June, organizers shifted their attention to the Governor, who has already been under fire for the violent state suppression of Black Lives Matter protesters.

Pointing to the tanking oil market during the pandemic, Line 3 opponents [argue](#) that state investments in oil industry expansion are not only unethical for their perpetuation of the climate crisis, but also fail to make economic sense. Enbridge still needs building permits from the Minnesota Pollution Control Agency, Department of Natural Resources, and the U.S. Army Corps of Engineers before beginning construction. As of now, opponents have approximately one year to convince regulators to block the project. If their demand is not met, they are prepared to put their bodies on the line to block construction.

West Virginia: Appalachian Oppression

Residents of West Virginia's Appalachian region have and are battling the construction of several pipeline projects in their backyards. They, along with Black and Indigenous activists in Virginia and North Carolina, were successful in beating back Dominion and Duke Energy's Atlantic Coast pipeline project. The Mountain Valley Pipeline, however, is still progressing, and is expected to be [completed](#) by early 2021. The Mountain Valley Pipeline is [controversial](#) among environmentalist groups because its construction has destroyed natural habitats, such as marshlands. The project will also contribute significantly to the climate crisis by [producing](#) the equivalent of 89 million metric tons of carbon dioxide annually, which is as much as 26 coal plants or 19 million passenger vehicles. Another issue for Appalachian communities as a result of the pipeline is the sedimentation, which [pollutes](#) their drinking water and causes [landslides](#) that threaten to [destroy homes](#).

For the small, Appalachian communities with high poverty rates and low life expectancies, it is also alarming for pipeline construction to continue during the COVID-19 pandemic. Governor Justice has allowed pipeline construction to continue, not letting the declaration of a ["State of Emergency"](#) and a "stay-at-home" order in response to the pandemic halt operations. Completing the Mountain Valley Pipeline by 2021 requires the presence of out-of-state workers in rural Appalachian communities with low COVID-19 rates. In March, The Rural Project circulated a [petition](#) titled "Protect Rural Areas from COVID-19 spread through non-essential pipeline construction workers & contractors," but was unsuccessful in achieving its goal of pressuring the Governors of Virginia and West Virginia to pause construction. Despite Mountain Valley LLC's promise that its workers would practice social distancing and wear masks, [photos](#) of pipeline workers in Virginia have shown that these rules are not followed. These repeated violations of COVID-19 protocols have led 22 Virginia legislators to [call](#) for all construction during the pandemic to stop.

To combat pipeline projects like these, Appalachian communities created the [Protect Our Water, Heritage, Rights](#) interstate coalition. The organization views the fight

against pipelines as a matter of both environmental justice and individual rights for the landowners residing in the region. The group celebrated the recent decision to cancel the Atlantic Coast Pipeline, yet remain concerned about the threat the Mountain Valley Pipeline still poses to their environment and communities. The coalition has been working with the [Appalachian Mountain Advocates](#), a public-interest law firm specializing in environmental justice, to challenge the legality of the project.

Activists were able to push Courts and regulatory agencies to temporarily delay the project's completion by [raising concerns](#) about permit violations and abuses to endangered species' natural habitats. However, the project is being rammed through by the pro-fossil fuel West Virginia government. In early July, a coalition of states led by West Virginia Attorney General Patrick Morrisey were successful in convincing the Supreme Court to [remove a barrier](#) delaying the project by fast-tracking the permitting process for the pipeline to cross streams. Mountain Valley LLC still needs the U.S. Forest Service's [approval](#) for construction through endangered species' natural habitats. Local pipeline opponents are hoping the Forest Service will not overlook the serious problems the pipeline has already created for the community with sedimentation and erosion both during and after it halted construction in the area.

Activists in both West Virginia and Virginia have participated in direct-actions such as [chaining themselves](#) to pipeline construction sites, which has occasionally halted construction for several hours. Protestors involved in these direct-actions are overcharged and face excessively harsh penalties. In one case of a protester chaining themselves to a vehicle at a construction site, they were charged with a felony for acts of terrorist threats, and two misdemeanors for trespassing and obstruction of and tampering with a vehicle. It is unclear whether the West Virginia Critical Infrastructure Protection Act will further deter public demonstrations and disruptive strategies like these, but as the pipeline still lacks permits from the U.S. Forest Service, pipeline opponents are not expected to stop organizing against the project.

The Implications of “Critical Infrastructure Protection” Laws for Broader Protest Movements

It is important to situate this new wave of anti-protest laws in the context of the broader social justice movements that have sparked both massive protests and massive backlash on the part of both law enforcement and elected officials with a vested interest in mitigating the impacts of those protests on legislation and policies. In the past two decades, mass protests in the United States have reflected both a groundswell of energy and growing urgent demands in communities around the nation to address systemic injustices, from police brutality to environmental racism. The effectiveness of various recent protests in driving support for changes to laws and legislation at the local, state, and nation levels has also spurred a concentrated effort on the part of certain politicians and special interest groups to put a halt to those changes by criminalizing the act of protesting and protesters themselves.

Criminalization of protests elevates political and corporate interests above civil rights and civil liberties protected under the U.S. Constitution. This report offers a particularly timely examination of a set of laws that carry implications not only for environmental and Indigenous activists and movements, but also for broader social justice movements that utilize protests as a means to effect change. These laws that aim to inflict harsh penalties for protesting oil and gas projects also impact ongoing national protests against police brutality and future protests that might result from the results of the presidential election.

Recommendations for Policymakers and Researchers

Marginalized communities in resource-rich U.S. states have been and continue to be oppressed by the exploitative, extractive projects of corporate polluters. Now, they face policies that they argue criminalize their First Amendment right to express their opposition to these projects.

Currently, the states that have passed “Critical Infrastructure Protection” laws have given a greenlight to both police and prosecutors to abuse their power, something the Black Lives Matter protests have revealed to already be a systemic issue.

History shows us that civil disobedience has been an indispensable tool for oppressed groups, giving them a voice. This was true for the early 20th century labor movement, the 1960s Civil Rights era, and countless more examples. The defeat of the Atlantic Coast Pipeline project was accomplished after a coalition of activists partook in acts of civil disobedience that would now be considered a felony in West Virginia.

It is also a historical fact that law enforcement frequently abuses its power against participants in these movements, sometimes going as far as unlawfully infiltrating them using agent provocateurs, such as was the case during the Federal Bureau of Investigation’s Counter-Intelligence Program, or COINTELPRO. Private security forces and law enforcement were discovered to have engaged in [intrusive surveillance](#) of the Standing Rock protests. Law enforcement in Minnesota has already begun using those [same surveillance tactics](#) to target individuals connected to the local movement against Enbridge Line 3. These developments, coupled with the increasing state and federal crackdowns on Black Lives Matter protesters, make it more crucial than ever for policymakers to codify the First Amendment rights of protesters into legislation that protects them from these types of abuses of power.

Thanks to the Black Lives Matter movement, public awareness of police misconduct and criminal justice issues have increased significantly, and civil rights organizations have made efforts to improve public education on the subject. However, there remains a lack of awareness regarding how states have been weaponizing the criminal justice system against pipeline protesters. As yet another issue that disproportionately affects Black, Indigenous, and other people of color, the industry-backed criminalization of pipeline protests is an example of the integral connection between the Black Lives Matter movement and environmental justice. A [recent investigation](#) by the Public Accountability Initiative revealed that oil and gas corporations are one of the top industry donors to police foundations, suggesting the link between the two issues may be more closely related than meets the eye.

To address the dearth of media coverage on the issue, researchers should investigate the topic further in future reports. Together, policymakers and researchers can protect the health, safety, and First Amendment Rights of these targeted communities by pursuing the following suggestions:

For Policymakers:

1. Introduce a “Protest Bill of Rights” to counter existing or possible future “Critical Infrastructure Protection” laws by both decriminalizing civil disobedience and holding law enforcement accountable for misconduct against protesters.
- » **Protections Against Law Enforcement Misconduct:** This section includes the ideas detailed in the [Movement for Black Lives Policy Platform](#), with some additional details for protecting the rights of protesters specifically.
 - Prohibit law enforcement from monitoring the activity of activists outside of protests and from monitoring protesters participating in non-violent demonstrations. In no circumstance can law enforcement gather intelligence or disseminate information concerning the First Amendment activity of protesters without first providing an explicit, detailed account of probable cause. Any officers found in violation of this protection will be penalized for political profiling and violating the constitutional rights of protesters.
 - Under no circumstance can law enforcement use invasive monitoring tactics, such as the monitoring of cellphone data, during protests.
 - Prohibit private security firms from performing traditional public law enforcement functions under contract such as surveillance, investigation, or policing First Amendment gatherings.
 - [Demilitarize law enforcement](#) and prohibit the use of projectiles, pepper spray, tear gas, tasers, rubber bullets, concussion grenades, and any other weapons designed to cause injury against protesters for acts of non-violent disruption.
 - Prosecute any instances or claims of police misconduct using vehicles, such as bicycles or cars, to injure, threaten, or intimidate protestors.

- Launch investigations into any instances of legal observers, street medics, or media personnel being targeted or injured at protests. Prosecute any officers found to be involved.
- Require law enforcement to both document and present probable cause for every individual arrest during First Amendment assemblies, and ban pre-emptive arrests. Prosecute any officer who is found to have made false arrests.
- Ban all cooperation between law enforcement and armed vigilante groups.
- Any officers found guilty of violating the above provisions will be fired and have their pensions revoked. Depending on the severity of the misconduct, they may also be subjected to criminal prosecution.

» **Strengthening First Amendment Rights**

- Codify all demands made in the M4BL “Respect Protesters” policy platform, particularly the demand to cease equating violations of property with violations of human life.
- Limit the charge of “trespassing” to no more than a misdemeanor in all instances related to protesting and civil disobedience.
- Prohibit the application of “conspiracy” charges relating to cases of trespassing, vandalism, rioting or any other charges short of violence against people.
- Prohibit the use of felony rioting charges for mass arrests, with every individual arrest at First Amendment gatherings requiring evidence of probable cause.
- Eliminate pre-trial detention and the practice of money bail.
- Investigate every instance of prosecutorial misconduct, including but not limited to the failure to turn over exculpatory evidence and the introduction of false evidence or evidence that was obtained impermissibly. Any proven instances of misconduct will result in immediate disbarment.

2. Strengthen federal environmental regulations that protect communities from hazardous infrastructure projects, and reinstate those that were weakened during the Trump Administration.
 - » **Reverse Trump Administration changes to the National Environmental Policy Act (NEPA)**, including the rollback of the requirement to consider a project's impacts on climate change and the newly added regulation that requires communities to limit their comments to specific technicalities. This new provision usually requires the hiring of lawyers or environmental specialists during the public comment period, which creates accessibility issues for impacted communities.
 - » **Add a company history assessment to NEPA**, which would review past environmental violations the company in question has committed and factor that into the environmental impact statement. Too often corporate polluters are not held accountable for their past violations, beyond being fined after the damage is already done. Fines have proven to be ineffective in deterring corporate polluters. As a result, they continuously fail to offer fair evaluations of the environmental risks of their projects. Repeat offenders must be closely monitored.
 - » **Reverse changes made to Section 401 of the Clean Water Act**. The rewriting of Section 401 [dilutes the ability](#) of states and tribes to protect their water quality. Their rights should be restored to their original strength.
 - » **Reinstate regulatory powers of the Endangered Species Act**, which has been under attack by the Trump administration since Executive Order 13777 in 2018. The order diminished regulatory protections for "critical habitats" and made it easier for corporate polluters to pursue projects that put these sensitive habitats at risk.

3. Create the requirement of a National Environmental Justice Assessment (NEJA) in addition to a NEPA assessment for all new chemical or fossil fuel infrastructure projects. NEJA will evaluate how projects may impact the livelihoods, bodily health, and cultural resources of surrounding communities. Understanding of the complexities of environmental issues has progressed significantly since the establishment of NEPA half a century ago, and NEJA would provide a necessary update by performing the following:
 - a. Establish an Equity Impact Mapping initiative to track geographic distribution of cumulative environmental impacts, pollution hotspots, and income and wealth inequality to identify frontline and vulnerable communities across multiple indicators. Establish an equity screen and scoring assessment to ensure that disadvantaged communities are not negatively affected by the implementation of projects
 - b. Mandate agencies to consult with tribes or communities the project is built in, similar to NEPA's public comment period. However, this period should be at least double the amount of time of NEPA's public comment period, which is 45 days, to ensure that communities have enough time to provide thorough responses.
 - c. NEJA would assess how projects would affect cultural resources in a process similar to NEPA's assessment of how they would impact environmental resources. Cultural resources would include local or Indigenous heritage sites, traditional agricultural, hunting, or fishing practices, spiritual or religious practices, traditional livelihoods, local knowledge systems, and anything else that is required for the community in question to sustain their way of life.
 - d. Evaluate the pollution levels and health statistics of the communities living in close proximity to the project. If the community has a history of exposure to toxic, hazardous material due to past projects, or a high prevalence of health issues that could be exacerbated by potential projects, that should be included as a risk factor in the assessment.
 - e. If construction for infrastructure projects begins prior to receiving necessary permits and completing NEPA and NEJA assessments, permit applications will be automatically invalidated.

4. Ban appointments or hirings of former industry lobbyists at any government agencies that regulate those industries. For example, any individual who has ever been employed as a lobbyist for the chemical, fossil fuel, or industrial agriculture industry will be ineligible for appointments to the EPA.
5. [Create a Matching Public Funds Program](#) to level the playing field for grassroots candidates, and to combat corporate capture of state campaign financing. Candidates can choose to opt into the program if they agree to the condition of turning down campaign contributions that exceed \$1,000. In return, the candidate receives public matching funds for every contribution of \$150 or less. To encourage more participation from constituents, the program would also award a \$25 tax credit for small donations to the candidate.

For Researchers:

1. Continue doing case studies of state legislatures that have introduced or passed a version of a “Critical Infrastructure Protection” law. Ideally, the studies would analyze the campaign finance data of the authors and lead sponsors of the law, a synopsis of oil and gas projects in the state that are facing public opposition, and profiles of the communities in close proximity to the infrastructure projects.
2. Compile a report documenting to what extent increases in state anti-protest laws, oil and gas project permits, and environmental protection rollbacks have taken place during the COVID-19 pandemic.
3. Further investigate the relationship between law enforcement and fossil fuel companies, building upon the July Public Accountability Initiative report.