

Protests under threat



When leaders let us down

**U.S. lawmakers seek to repress
our historic right to protest**

October 2022

ARTICLE 19



ARTICLE 19

72–82 Rosebery Avenue
London
EC1R 4RW
United Kingdom

T: +44 20 7324 2500

F: +44 20 7490 0566

E: info@article19.org

W: www.article19.org

Tw: [@article19org](https://twitter.com/article19org)

Fb: facebook.com/article19org

ARTICLE19

First published by ARTICLE 19, October 2022

www.article19.org

© ARTICLE 19, October 2022 (Creative Commons License 3.0)

ARTICLE 19 works for a world where all people everywhere can freely express themselves and actively engage in public life without fear of discrimination. We do this by working on two interlocking freedoms, which set the foundation for all our work. The Freedom to Speak concerns everyone's right to express and disseminate opinions, ideas and information through any means, as well as to disagree from, and question power-holders. The Freedom to Know concerns the right to demand and receive information by power-holders for transparency, good governance, and sustainable development. When either of these freedoms comes under threat, by the failure of power-holders to adequately protect them, ARTICLE 19 speaks with one voice, through courts of law, through global and regional organisations, and through civil society wherever we are present.

About Creative Commons License 3.0: This work is provided under the Creative Commons Attribution-Non-Commercial-ShareAlike 3.0 license. You are free to copy, distribute and display this work and to make derivative works, provided you:

- 1) give credit to ARTICLE 19
- 2) do not use this work for commercial purposes
- 3) distribute any works derived from this publication under a license identical to this one.

To access the full legal text of this license, please visit:

<https://creativecommons.org/licenses/by-nc-sa/3.0/legalcode>

Cover credit: Police officers confront Ieshia Evans, a nurse from Pennsylvania, before arresting her at a Black Lives Matter protest in Baton Rouge, Louisiana, July 9, 2016 (Photo: REUTERS/Jonathan Bachman)

Executive summary



March for Our Lives rally, protesting inaction on gun violence, Washington, DC, March 24, 2018 (Photo: Bob Korn/Shutterstock.com)

Since January 2017, at least 45 U.S. states and the federal government have proposed at least 253 bills and executive orders that, if enacted, would work to suppress the right to protest, punish peaceful protesters, and restrict protests critical of the government.¹ Of these, at least 44 bills have been enacted into law, and several additional bills are [currently working their way through the legislative process](#).

Legislative efforts to suppress protests have increased dramatically following the Black Lives Matter (BLM) protests in the summer of 2020. Since June 2020, 124 bills designed to suppress protest have been introduced. Worryingly, 106 of these have been since the beginning of 2021, of which [15 have been enacted into law](#). Though most of the recent attempts to pass these laws have

been defeated, there is no sign that these efforts have slowed. Rather, attempts by state governments to [silence political dissent](#), often made in conjunction with [state government attempts to suppress voting rights](#), are occurring at a [faster rate](#) in recent years than they were before.

Efforts by U.S. authorities to discourage peaceful protests are not a new problem. In March 2017, the UN Special Rapporteur on peaceful assembly and association [wrote a communication](#) to the U.S. Government expressing concern over 16 bills proposed between 2015 and 2017 that threatened to suppress peaceful assembly. The legislative attempts in those years were largely unsuccessful. Since that communication was written, however, government attempts to quash protests have been far more widespread and far more successful.



'Say her name' sign for Breonna Taylor, Black Lives Matter rally, New York, June 5, 2020 (Photo: stockelements/Shutterstock.com)

The more recent attempts by states have arisen in the context of large protest movements that have occurred over the last 3 years. The efforts can be traced directly to backlash against the Standing Rock protests and the BLM protests, particularly those that occurred in response to the murder of George Floyd by a Minneapolis police officer on May 25, 2020. In May 2022, prompted by a leak of the Supreme Court draft opinion which held that the U.S. Constitution did not confer a right to abortion, protests were held at the Supreme Court as well as at the private residences of several of the Supreme Court Justices. These protests set off yet another wave of condemnation of the protesters, and the

proposal, and enactment, of several new laws that restricted the right to peaceful assembly.

This report sets out to sort these recent attempts to stamp out protests into the most problematic trends for free expression and peaceful assembly. In doing so, the report analyzes the permissibility of the legislative attempts under international law. It also places these efforts into the context of political and social events within the U.S.—events that helped inspire lawmakers to introduce these attempts to suppress protests in the first place.

In this report, the newly proposed sections of legislation are sorted into nine trends. Nearly all of the proposed bills and enacted laws fall into one or more of these categories. Moreover, each of these trends constitutes a violation of international law:



- 1** Many of the bills contain overly broad and vague definitions of 'riot' and 'unlawful assembly' that allow for the imposition of criminal penalties on protesters. These broad definitions are also used to impose heightened penalties for behavior that is lightly punished outside the context of a protest.
- 2** Many of the laws grant civil, and in some cases criminal, immunity for private citizens who injure or kill protesters.
- 3** Many of the laws encourage aggressive state action against protesters, including by creating a cause of action for government officials for property damage and by providing civil immunity for law enforcement officers (LEOs) who kill peaceful protesters or even bystanders and journalists.
- 4** Several of the laws impose disproportionate penalties for demonstrators block public ways and access to public buildings.
- 5** Under several of the laws, those convicted of, or even just charged with, protest-related crimes would lose access to public benefits and public employment.
- 6** Several of the laws impose disproportionate criminal penalties for people convicted of 'defacing' monuments and memorials.
- 7** Many states have enacted laws which impose penalties for protests that occur near pipelines—laws that likely specifically target environmental protests and Native activists.
- 8** Several states and the federal government have proposed, or enacted, laws that would require protesters or protest organizers to pay public costs associated with the protest or pay restitution for property damage they themselves were not responsible for.
- 9** In a majority of states, legislation has been introduced which criminalizes, or increases the penalty for, incitement to riot. Several of the laws create liability that goes far beyond what is permissible. Furthermore, several states have proposed, and two have enacted, legislation that would expand the state's Racketeer Influenced and Corrupt Organizations (RICO) laws to encompass protest-related crimes.

Contents

Executive summary	3
1. Background	7
2. International human rights standards	14
3. Peaceful assembly under U.S. constitutional law	18
4. Trends	22
Overly broad and vague definitions of ‘riot’ and ‘unlawful assembly’	23
Civil and criminal immunity for killing protesters	27
Encouragement of aggressive state action against protesters	40
Disproportionate penalties for blocking public ways and access to public buildings	45
Loss of public benefits and public employment for those convicted of protest-related crimes	47
Excessive penalties for ‘defacing’ public monuments and memorials	51
Disproportionate penalties for protesting near pipelines	56
Laws requiring protesters to pay public costs and damages associated with the protests	60
Incitement and racketeering charges for organizing protests	63
5. Improper motivation behind the laws	67
6. Conclusion	70
7. Recommendations	73
Annexe	75
Endnotes	89



1. Background

Photo: Gayatri Malhotra/gayatrimalhotra.com

In 2016, the U.S. Government [approved a pipeline project](#) to transport oil from the Bakken oil field in North Dakota to a refinery near Chicago. Opponents of the project feared that the pipeline would threaten sacred Native lands and contaminate the water supply of the Standing Rock Sioux tribe and others in the area. In April 2016, [protesters gathered](#) at the construction site of the Dakota Access Pipeline to protest against the project, and, over the next year, thousands of Native demonstrators and their supporters gathered in an effort to stop the project from moving forward. As the protests grew larger, the [police response turned violent](#). According to protesters, police used pepper spray, beanbag rounds, tasers, rubber bullets, and high-pitched sound devices in an effort to disperse the crowds. The federal government halted construction for a time, but under [President Trump, the project was expedited](#) and the pipeline was [completed in April 2017](#).

Many of the recent legislative efforts to suppress peaceful protests directly reference

Standing Rock as the impetus for the bill. As will be discussed later, many states have passed laws explicitly banning protests on or near the sites of pipelines. Moreover, state legislators have cited Standing Rock as the reason for laws seemingly unrelated to the pipeline protests themselves. For instance, in February 2017, the North Dakota state legislature introduced House Bill (HB) 1203, which would have [provided immunity to drivers](#) who caused injury or death to protesters blocking roadways. State Representative Keith Kempenich, who introduced the bill, said that the Standing Rock protests inspired him to act. That effort failed in a close vote in the North Dakota House; however, [laws of this nature have since been enacted](#) across the country.

In addition to the Standing Rock protests, many of the new attempts to stifle protests are a reaction to the BLM protests that took place after George Floyd was murdered by a police officer on May 25, 2020. The [murder of Floyd](#) occurred around the same time that Breonna Taylor and Rayshard Brooks were killed by law enforcement officers (LEOs)



in Louisville and Atlanta, respectively, and [Ahmaud Arbery was murdered](#) by white citizens in a hate crime in Brunswick. In response to these deaths, numerous other killings of Black Americans by LEOs, and the structural racism underlying the deaths, [millions of people protested](#) in at least 140 cities across the U.S. By the middle of June, as many as [21 million adults](#) had attended at least one BLM protest.

While more than 93% of the BLM protests that took place in the summer of 2020 were

By the middle of June 2020, BLM protests had taken place in over 140 U.S. cities, attracting as many as 21 million people.

Standing Rock Solidarity Rally in Portland, Oregon, protesting against the encroachment on sacred native lands and environmental impact of the North Dakota Access Oil pipeline, September 9, 2016 (Photo: Diego G. Diaz/Shutterstock.com)

[peaceful](#), a small number were marked by violence toward people and damage to property. In Minneapolis, a member of a white supremacist group broke the windows of an auto parts store—an act the Minneapolis police said was intended to [incite racial tension](#). This act helped set off a string of fires and looting. In subsequent riots, at least two people died and approximately [USD 500 million in property damage](#) was incurred. In St. Louis, a retired police captain was killed by a group of looters who broke into a pawn shop after [protests turned violent](#). In Oakland, a U.S. Air Force sergeant who was a member of the ‘Boogaloo Boys,’ a right-wing extremist group, [allegedly murdered](#) a police deputy and a federal officer during riots in the city. In total, at least 11 Americans were [killed](#) while participating in political demonstrations in 2020, and at least another 14 died in other incidents linked to political unrest that year.



Black Lives Matter demonstration in Orlando, Florida, June 19, 2020 (Photo: Tverdokhlib/Shutterstock.com)

Soon after the protests began, police began to crack down on protesters with increasing force. Officers in Minneapolis began using tear gas and rubber bullets in an [effort to disperse crowds](#). Soon after, the Minnesota Governor [mobilized](#) the state's National Guard. National Guard units were eventually activated in at least [21 states](#). President Trump and other political leaders issued threats to protesters in response to property damage caused during the protests. Trump referred to the protesters as [‘thugs’](#) and, in an ominous Twitter post, wrote: ‘When the looting starts, the shooting starts.’ On June 1, President Trump threatened to deploy the military to states where violence and looting were taking place. That same day, LEOs used [tear gas on nonviolent protesters](#) in Lafayette Park across the street from the White House to clear the area for President Trump to have a photo-op in front of a nearby church.

Perhaps in some degree spurred on by these comments by the former president

and other state actors, the BLM protests were marked by numerous instances of excessive use of force and police violence towards protesters. According to a [joint communication](#) written by several UN Special Rapporteurs, between May 29 and June 5, 2020—the first week of the George Floyd protests—there were 125 separate instances of excessive use of force by LEOs against peaceful protesters in at least 40

More than 93% of the BLM protests that took place in the summer of 2020 were peaceful.

**In the first week
of the George
Floyd protests, law
enforcement officers
used **excessive force**
against peaceful
protesters in **125**
separate instances in
at least **40** states.**

states, including the June 1, incident in Washington DC. In August and September 2020, there were **additional major incidents** in Portland, Kenosha, and New York City.

Of particular note is a comparison between the **state's use of force in Lafayette Park** on June 1, 2020 and its use of force on January 6, 2021 at the attempted insurrection that took place less than 3 km away. In both incidents, the crowds were nearly the same size. At the Capitol, the mostly white crowd had gathered in an attempt to overturn the results of the recent presidential election. Several hundred people broke into the Capitol building, smashing doors and defacing statues, and roamed the halls calling for the murder of elected politicians. Many LEOs were assaulted and one later

Protesters gather in downtown Washington, DC, after the Kentucky Grand Jury's decision not to charge any police officers in connection with the shooting of Breonna Taylor, September 23, 2020 (Photo: bgrocker/Shutterstock.com)



These legislative efforts primarily target oppressed members of American society, specifically Black Americans, protesting against oppression.

died. Two officers [committed suicide](#) shortly after the event. Moreover, videos have surfaced that appear to show some police officers fraternizing with the insurrectionists at the Capitol, including one in which an LEO appears to take a [selfie with a rioter](#) inside the Capitol building.

By comparison, on June 1, 2020, a diverse crowd gathered calling for an end to police brutality and racial inequity. Unlike the group at the Capitol 6 months later, who were left mostly unmolested by law enforcement officials, the peaceful BLM activists were dispersed with [chemical agents and rubber bullets](#). Two [military helicopters circled overhead](#), one flying just above tree level as protesters fled.

Placards displayed at a New York City rally against police brutality, May 29, 2020 (Photo: Christopher Penler/Shutterstock.com)



Many, if not most, of the protest laws proposed in the past year either explicitly reference the BLM protests or appear to be implicitly inspired by the events following the murder of George Floyd. In stark contrast, by July 2021, the U.S. Congress had still [not found bipartisan support](#) on whether or how to investigate the insurrection at the U.S. Capitol.

These legislative efforts do not target all protesters equally, but rather primarily target oppressed members of American society, specifically Black Americans, when they protest against oppression. The bills appear designed to uphold a discriminatory, often racist, status quo. This becomes clear when analyzing the language used by politicians and members of the media, many of whom have consistently stigmatized protesters.

Throughout the George Floyd protests, the media and politicians often labeled protesters, including those protesting peacefully, as 'thugs' and 'rioters.' In his June 1, 2020 speech, President Trump used [some form of the word 'riot'](#) five times. He also described those protesting as an '[angry mob](#)' and 'looters, criminals, [and] rioters' committing 'acts of domestic terror.' On May 29, President Trump referred to the protesters as '[thugs](#)' in a Tweet. Members of the media also used this language. In the [analysis of 2,800 articles](#) published between May 26 and June 2, 2020, Oxford English Dictionary found that the use of the word 'riot' was common by members of the media in describing the BLM protests.

More recently, on May 2, 2022, Politico released a leaked draft of a majority Supreme Court opinion that, if it accurately reflected the decision by the Supreme Court, held that the U.S. Constitution did not confer a [right to abortion](#). After this leak, protesters demonstrated in front of the Supreme Court in Washington DC as well as the private residences of several of the Justices. These

[protests continued](#) for several months. On June 30, more than 180 abortion rights protesters [were arrested](#) after they blocked an intersection near the Supreme Court. On July 19, an additional [35 protesters](#), among them 17 members of Congress, were likewise arrested outside the Supreme Court. While the protests themselves were not violent, a man turned himself in to authorities who claimed to be armed and to have travelled to the area to [kill Supreme Court Justice Brett Kavanaugh](#). In response to these protests, several prominent politicians called for the federal government to quash the protests. Florida also enacted a law designed to [prohibit protests in front of private residences](#).

Many lawmakers have made clear, through their actions or words, that the laws are intended to prevent protests by marginalized groups, while allowing other protests to take place unabated. For example, before signing Florida HB 1, which, among other provisions, made it a [crime to block roads during a protest](#), Florida Governor Ron DeSantis said, 'We saw really unprecedented disorder and rioting throughout the summer of 2020 and we said that's not going to happen here in the State of Florida.' He was, of course, referring to



the BLM protests that occurred after George Floyd's murder. On July 13, 2021, after the law took effect, large demonstrations broke out in Miami in support of protests in Cuba against the country's communist regime. This time, the protesters were part of DeSantis's base. The protesters caused an hours-long closure on the Palmetto Expressway. This was, supposedly, the exact type of scene that HB 1 was designed to prevent. However, [not a single citation](#) or arrest took place. Governor DeSantis, who vocally supported the anti-communist protesters, said that this round of protests was 'fundamentally different' from the BLM protests but could only distinguish them by saying that the Cuba protests 'aren't riots.'

In a more stark example, Bob White, the chair of the Republican Liberty Caucus

of Florida, argued against HB 1 when it was proceeding before the Florida state legislature. His opposition to the bill, however, did not come from his worry about the bill's suppression of all expression; rather, he was worried that '[t]here are [provisions in the bill](#) that could lead to unintended consequences, allowing liberal prosecutors or other elected officials to shut down peaceful conservative protest gatherings and go after the organizers.' Whether lawmakers truly believe the rhetoric used to demonize BLM protesters or whether they used it to make palatable these assaults on expression and assembly, the stigma against protesters from marginalized groups in America made possible the legislative efforts by nearly every state legislature in the country to silence protest.

Resolution 24/5 of the Human Rights Council

reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful protest and of association are in accordance with their obligations under international human rights law.



2. International human rights standards

Article 21 of the [International Covenant on Civil and Political Rights](#) (ICCPR), which the U.S. ratified in 1992, guarantees the right to peaceful assembly. While some restrictions on protests are permissible under international law, any restriction on this right must be ‘imposed in conformity with the law and ... necessary in a democratic society.’ [Article 21](#) enumerates a list of the permissible justifications for a restriction on assembly: to protect national security, public safety, public order, public health, public morals, or the rights and freedoms of others. No other governmental interest can justify a restriction on peaceful protest.

This right is also reflected in [Article 8](#) of the International Covenant on Economic, Social and Cultural Rights, signed by the U.S. in 1977. It is a key human right in international law, enshrined in [Article 20](#) of the Universal Declaration of Human Rights (UDHR).

The right to freedom of opinion and expression is guaranteed by [Article 19](#) of the ICCPR and [Article 19](#) of the UDHR. Like the right to peaceful assembly, free expression can be subject to certain restrictions. These must be ‘provided by law’ and ‘necessary’ to protect the rights and reputations of others, national security, public order (*ordre public*), public health, or public morals.

[Resolution 24/5](#) of the UN Human Rights Council:

- ▶ reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights,



and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful protest and of association are in accordance with their obligations under international human rights law.²

To determine whether conduct is protected under the ICCPR, one must first determine whether the conduct in question constitutes ‘participation in a peaceful assembly.’³ If the protest is not peaceful, the protester’s right to assemble is not under threat, and government restrictions are permissible (assuming they do not otherwise violate international law). If the protester is engaged in a peaceful protest, however, it is necessary to then determine whether any existing restrictions on assembly in that context are legitimate under Article 21 of the ICCPR.⁴

There is a presumption in favor of considering assemblies to be peaceful.⁵ ‘Violence’ in the context of Article 21 generally requires the use of physical force by participants that is likely to result in injury, death, or serious damage to property.⁶ Importantly, ‘[m]ere pushing and shoving or disruption of vehicular or

pedestrian movement or daily activities do not amount to “violence”.⁷ The UN Human Rights Committee explained, ‘peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy.’⁸

In a joint statement, the UN Special Rapporteurs on association and expression declared that there is no such thing under international law as a violent protest; rather, there are only violent protesters who should be dealt with individually. According to the Special Rapporteurs, the right to peaceful assembly is an [individual right](#), not a collective one, and must be treated as such.

In the context of a peaceful protest, it is permissible for state actors to issue certain restrictions on protests in a way that does not violate international law. To comport with international law, any restriction must be permissible under the three-part test outlined in [Article 21](#) of the ICCPR.

- 1** Any restriction must be provided by law. That is, it must be set down in formal legislation and must not be vague. The restriction must be established by general rule so as to avoid arbitrary restrictions on human rights.⁹ In addition, the law must be precise enough ‘to enable an individual to regulate her conduct accordingly, and it must be made accessible to the public.’¹⁰
- 2** Any restriction on assembly must be necessary in a democratic society to protect national security, public order, public health, public morals, or the rights and freedoms of others.

This is a comprehensive list; no other government interests can justify a restriction on association.¹¹ It is essential that the restrictions ‘not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.’¹²

- 3 A restriction must be a necessary and proportionate means of achieving one of the permissible justifications. That is, it must be the least intrusive means of achieving its protective function. In addition, the detrimental impact of the interference cannot outweigh the resulting benefit of the restriction.

The most common justifications for the laws proposed in the U.S. are to protect public safety or public order. For a restriction designed to protect public safety to be permissible under international law, the state must establish that the assembly ‘creates a real and significant risk to the safety of persons (to life or security for person) or a similar risk of serious damage to property.’¹³ In addition, it is not damaging to public order that peaceful assemblies may at times be ‘inherently or deliberately disruptive.’¹⁴ Because the scope of what could be included within ‘public order’ is so large, legal experts have argued for a strict determination of the necessity and proportionality of a restriction that uses this justification.¹⁵

States have an obligation to create an enabling environment for protests and must ensure the safety of participants and that participants have the full ability to exercise their fundamental rights. In addition, states have an obligation to protect journalists, monitors, and members of the public—as well as public and private property—from harm.¹⁶ For this reason, it is permissible for state actors to restrict

protests that turn violent to uphold order or protect public safety. However, state actors should only resort to force in ‘exceptional’ circumstances.¹⁷ Any use of force must be only the minimum amount necessary, targeted at specific individuals, and proportionate to the threat posed.¹⁸ As such, the role of the state is to ensure that assemblies are able to take place, and it must exert only the ‘minimum force necessary’ to minimize the likelihood of deaths, injuries, and property damage.¹⁹

Thus, a restriction on a peaceful protest does not constitute a violation *per se* of international law; any restrictions must follow the three-part test in Article 21 of the ICCPR. This is the test by which this report will analyze all recent attempts by the U.S. Government to restrict protest.

In addition to the general framework provided by Article 21, it is essential that any restriction on assembly is content-neutral. That is, the restriction must not be related to the message intended to be conveyed by the demonstration.²⁰



States have an obligation to create an enabling environment for protests and must ensure both the safety of participants and that participants have the full ability to exercise their fundamental rights. In addition, states have an obligation to protect journalists, monitors, and members of the public—as well as public and private property—from harm.

If the motivation behind the enactment of a law is improper, the law itself is violative of international law. Though the text of the ICCPR does not direct decision-making bodies to look at ulterior motives for restrictions,²¹ the UN Human Rights

Committee has stated, '[r]estrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.'²² This language is echoed in the Siracusa Principles.²³

3. Peaceful assembly under U.S. constitutional law



The right to peacefully assemble is enshrined in the First Amendment to the U.S. Constitution.²⁴ The drafters of the U.S. Constitution conceptualized the right to freedom of speech as the freedom of citizens to engage in public speech—speech regarding matters of public concern, and particularly that which is critical of the government—without prior restraint or fear of subsequent punishment.²⁵ Judge Cooley explained that the purpose of the First Amendment was to prevent ‘any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.’²⁶ The government cannot prescribe the means used by the people to discuss public events, and, as such, ‘citizens must be free to use new forms, and new forums, for the expression of ideas.’²⁷

Thus, the First Amendment prohibits the state from infringing on one’s right to march, leaflet, parade, picket, circulate petitions, ask for signatures, or any other form of peaceful demonstration. Moreover, in general, states are prohibited from regulating or restricting speech based on the viewpoint or content expressed. It is not relevant how unpopular or controversial the opinion expressed might be.

If the government enacts a law which restricts speech based on the content of the speech, the state must show a compelling interest that justifies the restriction.²⁸ The government bears the burden of showing that the interest exists,²⁹ and the law must be narrowly tailored to restrict the freedom of speech only as necessary to promote or protect the interest.³⁰ The First Amendment protects the right of freedom of speech from both heavy-handed government action and more discreet action that nevertheless impinges upon free speech.³¹

First Amendment to the U.S. Constitution

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



Protesters sit as police prevent access to statue of Andrew Jackson in Lafayette Square, Washington, DC, June 23, 2020 (Photo: Allison C. Bailey/Shutterstock.com)



Occupy Wall Street protesters' general assembly, New York, September 17, 2012; the Occupy protests were among the largest in the U.S. in the 21st century (Photo: lev radin/Shutterstock.com)

The right of assembly was applied beyond the federal government to the states in *De Jonge v. Oregon*, a unanimous decision. In that case, the Court held that 'the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.'³² After *De Jonge*, individual states, in addition to the federal government, were barred from infringing on the peoples' right to peaceful assembly.

While the right to peaceful assembly is broadly protected by the Constitution, states can impose certain permissible restrictions on protests. Speech is broadly protected by the First Amendment, but the state can prohibit the incitement of imminent violence or other lawless action that threatens harm to people or property without infringing upon protected constitutional rights. In addition, the right of freedom of expression does not extend to true threats. In *Virginia v. Black*, the

Supreme Court held that a speaker makes a true threat when that 'speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.'³³ Though it is constitutionally permissible for the state to criminalize the expression of true threats, a true threat uttered by a protester would not justify state actors from interfering with a protest as a whole.³⁴

Moreover, the government can impose 'time, place, and manner' restrictions on speech. A regulation of this nature does not regulate expression based on the content of the message; rather, these restrictions regulate the way speech is expressed, and are generally imposed to preserve public order in some way. For a time, place, and manner restriction to be permissible, the restriction must be content-neutral, narrowly tailored to serve a significant government

interest, and leave open ample alternative channels for communication. Significant governmental interests that might justify a time, place, and manner restriction include public safety and public order. To illustrate these types of restrictions, a permissible time restriction might prohibit protests in residential neighborhoods in the middle of the night, while an impermissible time restriction might allow protests only during a narrow band of time. Place restrictions can justifiably outlaw protests that impede access to an emergency room entrance at a hospital, but they cannot prohibit all protests on the grounds of a state house. Finally, manner restrictions could prohibit loud sound trucks in a residential neighborhood, but could not prohibit all protests that swell beyond a certain size.³⁵

Furthermore, to be permissible, any laws which restrict speech or assembly must be neither vague nor overbroad. As with the first prong of the ICCPR test under international law, a restriction on speech is unconstitutionally vague if it does not provide fair notice for a reasonable person to distinguish speech that is permissible under the law from speech that is impermissible. A restriction on speech is **unconstitutionally overbroad** if it proscribes speech that is constitutionally protected. As stated by the Supreme Court, 'The objectionable quality of vagueness and overbreadth does not

depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.'³⁶

In *Thornhill v. Alabama*, the Supreme Court held:

- ▶ [T]he group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion.³⁷

Thus, while some restrictions on the right to protest are permissible under the U.S. Constitution, the framework in place in the U.S. broadly protects the right to protest. Criminal penalties on peaceful protesters are only permissible when absolutely necessary.

4. Trends

Demonstrations by unemployed workers in Grant Park, Chicago in 1932 attracted 20,000 people (Photo: Everett Collection/Shutterstock.com)]

Nearly all of the recently proposed and enacted protest laws fit into one or more of nine, general categories. Some laws, such as the one enacted in Florida, have provisions that touch on nearly all nine categories. Because of this, it is helpful when analyzing the recent efforts by U.S. states to criminalize peaceful protest to view these individual laws as part of a larger nationwide trend. The nine most common elements of the recent laws are:

1. overly broad and vague definitions of 'riot' and 'unlawful assembly';
2. civil and criminal immunity for killing protesters;
3. encouragement of aggressive state action against protesters;
4. disproportionate penalties for blocking public ways and access to public buildings;
5. loss of public benefits and public employment for those convicted of protest-related crimes;

6. excessive penalties for 'defacing' monuments and memorials;
7. disproportionate penalties for protesting near pipelines;
8. laws requiring protesters to pay public costs and damages associated with the protests; and
9. incitement and racketeering charges for organizing protests.



For each category, this report will provide the political context of the issue, an overview of the general structure of the laws, and an analysis of the proposed and enacted bills under international law.

1. **Overly broad and vague definitions of 'riot' and 'unlawful assembly'**

A significant number of states have introduced bills or enacted laws that purport to criminalize participation in a 'riot' or 'unlawful assembly.' These laws, however, use an overbroad and vague definition of these terms, thereby threatening assemblies protected under international law. In the past three years, at least 31 states and the federal government have introduced or enacted at least 95 bills that include, or rely on, an overly broad definition of 'unlawful assembly' or 'riot.'³⁸ Of these, 13 bills across 10 states have been enacted into law.³⁹

Because the definitions of 'riot' and 'unlawful assembly' are so vague and overbroad, restrictions that use these definitions are not 'provided by law' and are therefore impermissible under international law. In addition, these restrictions are neither proportionate nor necessary to achieve a permissible government interest. These laws are not narrowly tailored to uphold the public order or protect public safety.

Because many peaceful assemblies would be considered either a 'riot' or 'unlawful assembly' under the laws, these laws appear to grant states unfettered authority to arrest peaceful protesters and subject them to lengthy prison sentences.

Moreover, under many of the new laws, the existence of, or participation in, a 'riot' or 'unlawful assembly' is one element of a

In the past 3 years, at least 31 states and the federal government have introduced or enacted at least 95 bills that include, or rely on, an overly broad definition of 'unlawful assembly' or 'riot'.

separate crime. For instance, 'defacement' of a public monument or blocking a public street during a 'riot' is a felony, whereas in other circumstances, these crimes are lightly punished, if at all. Similarly, laws that provide civil or criminal immunity to those who kill or injure protesters only provide that immunity if the person or people who are injured or killed were participating in a 'riot.' Finally, laws which deny public benefits to protesters generally only apply to protesters engaged in 'riots' or 'unlawful assemblies.' Thus, an overly

Florida HB 1/SB 484

§15. Section 870.01

(2) A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in:

- (a) Injury to another person;**
- (b) Damage to property; or**
- (c) Imminent danger of injury to another person or damage to property.**

broad definition of these terms threatens to criminalize peaceful protest as a whole.

Because the definitions of ‘riot’ and ‘unlawful assembly’ are so vague and overbroad, restrictions that use these definitions are not ‘provided by law’ and are therefore impermissible under international law. In addition, these restrictions are neither proportionate nor necessary to achieve a permissible government interest. These laws are not narrowly tailored to uphold the public order or protect public safety.

Finally, as stated earlier, there is a presumption under international law that assemblies are peaceful until proven otherwise.⁴⁰ Any restriction that is put in place must be imposed with this in mind.

It is essential under international law:

- ▶ that ‘[t]he imposition of any restrictions should be guided by the objective of enabling and facilitating the exercise of the right, rather than seeking illegitimate, unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.’⁴¹ These restrictions, which grant state authorities the ability to imprison peaceful protesters, when viewed through the context of the government’s assault on peaceful protests, appear to be a conscious effort by the state to deter participation in protests critical of the government.

On April 19, 2021, Florida enacted a law (HB 1/SB 484) that, among its many provisions, greatly expanded the [definition of ‘rioting’ under state law](#). Under the new definition, one could be convicted of rioting for demonstrating with two other people or for participating in a ‘violent public disturbance’ with a ‘common intent’ to assist in violent and disorderly conduct. It is not necessary under the law for any injury or property damage to actually occur for a demonstrator to violate the law.

On September 9, 2021, a federal judge from the Northern District of Florida issued a preliminary injunction on the state’s enforcement of the law. Judge Walker acknowledged that the law was enacted following the BLM protests, writing:

- ▶ this Court is faced with a new definition of “riot”—one that the Florida Legislature created following a summer of nationwide protests for racial justice, against police violence and the murder of George Floyd and many other people of color, and in support of the powerful statement that Black lives matter.

Arkansas HB 1508

§7. Arkansas Code 5-71-201

(a) A person commits the offense of riot if, with two (2) or more other persons, he or she knowingly engages in tumultuous or violent conduct that creates a substantial risk of:

- (1) Causing public alarm;**
- (2) Disrupting the performance of a governmental function;**
or
- (3) Damaging or injuring property or a person.**

Indiana HB 1205

§10. IC 35-45-1-2. Sec. 2(a)

A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct commits rioting, a Class A misdemeanor.

§9. IC 35-45-1-1. Sec. 1

As used in this chapter:

‘Unlawful assembly’ means an assembly of three (3) or more persons who engage in tumultuous conduct.

‘Tumultuous conduct’ means conduct that results in, or is likely to result in, serious bodily injury to a person, substantial damage to property, or the obstruction of law enforcement or other governmental function.

The Court held that the definition of ‘riot’ under the law was both vague and overbroad, and therefore violated the U.S. Constitution.⁴² The standards under international law, though not precisely the same as U.S. constitutional standards, are quite similar on this point. Under international law, to be ‘provided by law’, a restriction must not use vague language. The language included in the law must be precise enough ‘to enable an individual to regulate his or her conduct accordingly.’⁴³

Here, Florida’s law does not provide notice to protesters if their actions fall under the scope of the law. First, the term ‘participates’ is unclear. The law does not clarify if, to participate in a violent public disturbance, one must actively intend to join in the violent behavior or if it is enough to participate in a protest in which violent and disorderly conduct might occur.⁴⁴ It is unclear if the protest must have turned violent before the protester ‘willfully participated’ or whether it is enough for the violence to have started after she ‘willfully participated’ in the protest.⁴⁵ Moreover, it is unclear whether actual, objective violence must have already occurred before the arrest, or if an LEO’s subjective belief of imminent violence is enough for a protest to be considered a

‘violent public disturbance.’⁴⁶ For these reasons, the definition of ‘riot’ in Florida’s law does not provide clear guidance to people to know if they are engaging in criminal activity, and therefore it is impermissibly vague. As stated by the Court, ‘[t]he vagueness of this definition forces would-be protesters to make a choice between declining to jointly express their views with others or risk being arrested and spending time behind bars, with the associated collateral risks to employment and financial well-being.’⁴⁷

The vagueness of the law is not just problematic because it fails to provide individuals with notice of whether their actions constitute criminal conduct; it also empowers LEOs to exercise arbitrary and unfettered discretion when enforcing the law. The statute does not provide objective standards to LEOs on what conduct is criminalized, and therefore the law opens the door to discrimination—either on the grounds of the message of a protest or based on the identity of the protesters themselves.⁴⁸

The scope of this definition is also overbroad. While the statute criminalizes activities that are not protected under international law, due to its ambiguity, the law also criminalizes protected speech. The Court held:

- ▶ Because it is unclear whether a person must share an intent to do violence and because it is unclear what it means to participate, the statute can plausibly be read to criminalize continuing to protest after violence occurs, even if the protesters are not involved in, and do not support, the violence. The statute can also be read to criminalize other expressive activity, like remaining at the scene of a protest turned violent to film the police reaction.⁴⁹

On April 29, 2021, Arkansas enacted a law (HB 1508) which defined ‘rioting’ as participating with two or more people in ‘tumultuous conduct’ that creates a ‘substantial risk’ of ‘public alarm.’⁵⁰ Like the Florida law, the definitions of prohibited activities under this statute are too vague to allow people to determine whether their actions violate the law.

The law provides no guidance on what it means to pose a substantial risk of causing public alarm. The law provides no clarity upon who determines, and how they would determine, that there is such a risk of public alarm, or what would even constitute public alarm in the first place. Given the overbreadth of the language, this restriction is in no way the least restrictive means to protect public order or public safety. The UN Human Rights Committee has stated, ‘States parties [to the ICCPR] should not rely on a vague definition of “public order” to justify overbroad restrictions. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. Public order and law and order are not synonyms.’⁵¹ This law threatens to criminalize protected, though potentially disruptive, protests and cannot be justified, regardless of the government’s interest.

Finally, on January 14, 2021, state legislators in Indiana introduced a bill (HB 1205) that would define ‘rioting’ as being a member of an ‘unlawful assembly’ and engaging in ‘tumultuous conduct.’ The definition provided under the law for ‘unlawful assembly’ is tautological—that is, an ‘unlawful assembly’ is defined as an assembly that engages in tumultuous conduct. The definition of ‘tumultuous conduct’ under the law includes that which ‘is likely to result in ... the obstruction of law enforcement or other governmental function.’ It is unclear what ‘obstruction’ means in this context. As a result, a member of a three-person peaceful protest whose conduct is likely to interfere with a legislative assembly, for instance, could be convicted of rioting in Indiana. The [bill was not enacted into law](#) during the 2021 legislative session.

In addition, Arkansas has enacted a law (HB 1508) which expands the definition of terrorism to include potentially peaceful protests.⁵² Similar proposals in Georgia, North Carolina, and Texas have been defeated.⁵³ These laws create felony offenses under the umbrella of terrorism that threaten peaceful protesters with up to 10 years’ imprisonment. Under Texas’s proposed law, for example, a person commits ‘threatened terroristic violence’ if she ‘threatens to commit’ any crime that involves violence to property or persons, with the intent to ‘influence the conduct or activities’ of a government entity.⁵⁴ Under the law, there would be no requirement that the threat is a serious intention to imminently commit an unlawful act of violence. As such, the law would likely cover protected speech by peaceful protesters. Moreover, damage to property should not be considered a terrorist act under the law unless it reaches a certain threshold of damage. Under Texas’s law, a threat to commit ‘any offense involving violence to ... property’ is enough to constitute a felony of the third degree.⁵⁵

Thus, even minor threats of property damage would be a terroristic threat under the law—the scope of the law is thus overbroad, and punishments under the law, if applied to small amounts of property damage, would be disproportionate.

2. Civil and criminal immunity for killing protesters

Several states have proposed or enacted laws that provide civil immunity—and in some cases even criminal immunity—to drivers who injure or kill protesters. In 2017, both before and after the Charlottesville attack discussed later, six states introduced legislation that, if they had been successfully enacted, would have [shielded drivers who attacked protesters](#) from liability. As of July 2021, at least 18 states have proposed at

Between May 25, 2020 and 30 September, 2021, vehicles were driven into protests at least 139 times.

least 28 bills that would grant some form of immunity to drivers who injured or killed protesters.⁵⁶ Since April 2021, three states—Florida, Oklahoma, and Iowa—have enacted laws that provide immunity in civil suits to drivers who injure or kill protesters.⁵⁷ Oklahoma's law also provides immunity from criminal prosecution to the drivers.

In addition to immunity for drivers, there is also a growing trend among U.S. states

Memorial flowers and notes left at the spot where Heather Heyer was killed when a car was driven into crowds of anti-fascist protesters in Charlottesville, Virginia, August 2017 (Photo: Kim Kelly-Wagner/ Shutterstock.com)



Florida HB 1/SB 484

§18 Florida Statutes 870.07

- (1) In a civil action for damages for personal injury, wrongful death, or property damage, it is an affirmative defense that such action arose from an injury or damage sustained by a participant acting in furtherance of a riot. The affirmative defense authorized by this section shall be established by evidence that the participant has been convicted of a riot or an aggravated riot prohibited under s. 870.01, or by proof of the commission of such crime by a preponderance of the evidence.**

to enact ‘stand your ground’ laws in the context of assemblies that would provide immunity to private citizens who use deadly force against protesters when confronted or when a protester enters or threatens to enter private property. Alabama, Kentucky, Louisiana, Mississippi, Missouri, Ohio, New Jersey, New Hampshire, and South Carolina have all proposed legislation to this effect.⁵⁸

Driver-immunity laws

Over the past couple of years, dozens of drivers have driven their vehicles into peaceful protesters. The most notorious example of this occurred in 2017, when James Alex Fields Jr. [deliberately drove his car](#) into a crowd of counter-protesters at the ‘Unite the Right’ rally in Charlottesville, killing Heather Heyer and injuring dozens of others. Fields was [sentenced](#) to two life sentences plus 419 additional years’ imprisonment for the attack.

In January 2017, several months before the Charlottesville attack, right-wing news sources such as Fox News, the Daily Caller, Right Wing News, and the Conservative Post published a video of [cars hitting protesters](#). The description of the video, written by Daily Caller video editor Mike Raust, encouraged viewers to ‘[Study the technique](#); it may prove useful in the next four years.’ Fox News included this caption when it [republished](#) the video on its website.

These attacks did not end after Charlottesville. According to Ari Weil, a terrorism researcher at the University of Chicago’s Project on Security and Threats, there were at least 104 incidents of people driving vehicles into protesters between May 27, 2020 and September 5, 2020—the height of the George Floyd protests in the U.S. According to Weil, in at least 43 of the incidents, the drivers had malicious intent, though only 39 drivers face criminal charges. For example, James Hunton, who [drove into a crowd of protesters](#) in Louisville, Kentucky, told LEOs: ‘there were protesters blocking the fucking road, they deserved to be hit, anybody would.’ In a separate incident, in Iowa City, Iowa, a driver switched off his lights before [driving into protesters](#). He claimed the protesters needed ‘an attitude adjustment.’

In total, [96 incidents](#) involved a civilian who drove into protesters. In the other eight incidents an LEO rammed protesters with a vehicle. In the time frame of Weil’s research, two people were killed in these incidents—one in Seattle, and one in Bakersfield, California. Moreover, at the height of these incidents, posts claiming it was [legal to drive deliberately into crowds](#) of protesters were shared widely on Facebook and other social media platforms.

Ramming incidents have continued unabated. According to a study by the *Boston Globe*, between May 25, 2020 and

Iowa SF 342

§51. Iowa Code 321.366A

1. **The driver of a vehicle who is exercising due care and who injures another person who is participating in a protest, demonstration, riot, or unlawful assembly or who is engaging in disorderly conduct and is blocking traffic in a public street or highway shall be immune from civil liability for the injury caused by the driver of the vehicle.**
2. **The driver of a vehicle who is engaging in disorderly conduct and is blocking traffic in a public street or highway shall not be immune from civil liability if the actions leading to the injury caused by the driver of a vehicle constitute reckless or willful misconduct.**
3. **Subsection 1 shall not apply if the injured person participating in a protest or demonstration was doing so with a valid permit allowing persons to protest or demonstrate on the public street or highway where the injury occurred.**

Iowa Code 723.4 Disorderly conduct

1. **A person commits a simple misdemeanor when the person does any of the following:**
 - f. **(1) Knowingly and publicly uses the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit trespass or assault.**

September 30, 2021, vehicles drove into protests at least [139 times](#), and at least two [additional incidents](#) have taken place since that study concluded. More than 100 people have been injured and at least three people have been killed in these [incidents](#).

On June 13, 2021, a man drove through a crowd of people protesting the police shooting of Winston Boogie Smith Jr. in Minneapolis, Minnesota. A [woman was killed](#) and two others were injured. This was the second time in a little over a year that an incident of this nature had occurred in Minneapolis. In May 2020, a [fuel tanker truck drove through a crowd](#) of protesters in the city who were protesting the death of George Floyd. On June 19, 2021, the truck driver in that incident entered into a continuance-without-prosecution agreement, through which the

[charges against him will be dropped](#) if he remains law-abiding for one year.

On June 24, 2022, a driver in a truck hit at least two people, injuring one, at a rally for reproductive freedom and abortion access in Cedar Rapids, Iowa following the Supreme Court decision overturning *Roe v. Wade*. The driver of the vehicle was [charged](#) with Assault by Use or Display of a Dangerous Weapon (Vehicle) and Leaving the Scene of a Personal Injury Accident. Because Iowa is one of the states which passed a law shielding drivers from civil liability in these types of cases, it [remains to be seen](#) what will happen here.

According to the *Boston Globe's* investigation of these incidents, there have only been criminal charges filed against the driver in 65 of the incidents—less than half

Under Iowa state law, defacing the U.S. flag is now treated as disorderly conduct. This has profound implications for free expression. The U.S. Supreme Court has held that burning an American flag is constitutionally protected speech.

of them. A driver has been convicted of a felony in [just four cases](#) thus far. Despite the low rate of convictions from these incidents, they nevertheless provided the motivation behind many of the recently proposed laws. For instance, according to the Republican lawmaker who sponsored [Oklahoma's bill](#), the law was inspired by an incident in which a truck driver drove into a group of BLM protesters in Tulsa, Oklahoma, paralyzing one person. The driver was [not charged](#).

The laws that have been enacted in Florida, Oklahoma, and Iowa all grant immunity to drivers who commit acts similar to such incidents.

Thousands protest in Cedar Rapids, Iowa, on June 6, 2020, in response to the murder of George Floyd; Iowa law now permits a gathering of as few as three people to be defined as a 'riot' if just one of the participants uses unlawful force (Photo: Thai tea/Shutterstock.com)



In Handyside v. United Kingdom,
the European
Court of Human
Rights held:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.

Oklahoma HB 1674

§2. Oklahoma Statutes Title

21, Section 1320.11

A motor vehicle operator who unintentionally causes injury or death to an individual shall not be criminally or civilly liable for the injury or death, if:

- 1. The injury or death of the individual occurred while the motor vehicle operator was fleeing from a riot, as defined in Section 1311 of Title 21 of the Oklahoma Statutes, under a reasonable belief that fleeing was necessary to protect the motor vehicle operator from serious injury or death; and**
- 2. The motor vehicle operator exercised due care at the time of the death or injury.**

The affirmative defense from civil liability created by Florida's law is representative of many of the laws proposed and enacted elsewhere in the U.S. Here, the affirmative defense arises in situations where the individual injured or killed was convicted of a riot or aggravated riot. There is no *mens rea* requirement to this law—the statute provides civil liability regardless of whether the driver intentionally hit protesters, acted recklessly, acted negligently, or provided a reasonable duty of care.

As stated in the previous section, this is deeply problematic because Florida is one of the many states that has codified an overbroad and vague definition of riot. According to Judge Walker of the Northern District of Florida, 'rioting' under Florida law:

- ▶ can plausibly be read to criminalize continuing to protest after violence occurs, even if the protesters are not involved in, and do not support, the violence. The statute can also be read to criminalize other expressive activity, like remaining at the scene of a protest turned violent to film the police reaction.⁵⁹ As such, in Florida, a driver may escape civil liability for killing peaceful protesters.

Moreover, while Florida is entitled under international law to pass restrictions to prevent violent conduct, there is a high bar on what is considered a violent assembly. A protest in which participants block streets is not, by its nature, a violent protest. According to the Human Rights Committee, 'disruption of vehicular or pedestrian movement ... [does] not amount to "violence".'⁶⁰ Peaceful assemblies may be conducted in all spaces to which the public has access. This, of course, includes public roads.⁶¹ As such, any claim that a protest that blocks traffic is violent on its face is not supported by international law. Moreover, it is not relevant whether or

not the protest is 'violent.' As stated before, even those engaged in a violent protest are entitled to all fundamental rights beyond the right to assemble.

Article 6 of the ICCPR states: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life.' It is permissible in certain circumstances for a private individual to use lethal force in self-defense. For that use of force to be justified, first, the force used must be 'strictly necessary' to counter the threat posed by the attacker. Second, the use of force must be a 'method of last resort.' Third, the amount of force 'cannot exceed the amount strictly needed' to counter the attacker. Fourth, the force must be 'carefully directed' only against the attacker. Finally, the threat of force by the attacker 'must involve imminent death or serious injury.'⁶² Article 6 of the ICCPR is non-derogable.

Florida's law provides civil liability not only for when the driver fears imminent death or serious injury, but also if all that is required is that the individual injured or killed was convicted of 'rioting.' Thus, drivers who hit protesters can escape from civil liability when under no threat at all to themselves.

Each state, including Florida, that has proposed or enacted a law that permits the use of lethal force against protesters already allows private citizens to use lethal force in self-defense. Therefore, the new laws are, at best, superfluous. New laws also allow for the use of lethal force in situations where the use of force is not strictly necessary, a method of last resort, or directed only against the attacker.

In Iowa, like in Florida, a driver is immune from civil liability for injuring someone who is participating in a 'protest, demonstration,

riot, or unlawful assembly', engaging in 'disorderly conduct, and blocking traffic', as long as the driver is exercising 'due care' and the protester does not have a permit to be in the street.⁶³ Thus, unlike the Florida law, in Iowa there must be a finding that the driver exercised due care—they would not be immune from suit if they acted intentionally, recklessly, or negligently.

On June 16, 2021 Iowa, like Florida, enacted a law (SF 342) in which the definitions of 'riot' and 'unlawful assembly' are over-inclusive. There, a 'riot' consists of a group of three or more people assembled 'in a violent manner', at least one of whom has used any unlawful force or violence against another person or caused property damage.⁶⁴ If a single demonstrator engages in violence, therefore, every member of an otherwise peaceful assembly will be considered part of a riot, opening the door for civil liability for a driver who injures a member of the assembly. Iowa's law, therefore, protects drivers irrespective of whether protesters have engaged in violent behavior.

Even more troubling, is that Iowa's law provides civil immunity when a driver injures someone who is engaging in disorderly conduct and blocking traffic. Under Iowa state law, by showing disrespect to the U.S. flag—through defacement, defilement, or mutilation—one is guilty of disorderly conduct.⁶⁵ This has profound implications for free expression. The U.S. Supreme Court has held that burning a U.S. flag is constitutionally protected speech.⁶⁶ Such a restriction on flag burning is discrimination based on the content and viewpoint of the speech. Under the Iowa law, burning the flag as a means of disposing of it if it was dirty or torn does not result in conviction.⁶⁷ Thus, the law is not designed to protect the physical integrity of the flag in all circumstances, nor does the law does not prohibit disrespect to any other flag, or, indeed, any other piece of

cloth. Rather, the law is designed to protect the U.S. flag only from knowing disrespect.⁶⁸ The emotive impact of the act is what is targeted by the law—it is clearly a content-based restriction impermissible under the U.S. Constitution and international law.

The right to free expression encompasses speech that offends, shocks, or disturbs the state or any portion of the population. The U.S. Supreme Court has recognized that a principal 'function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'⁶⁹ For that reason, under U.S. law, '[e]xpression may not be prohibited on the basis that an audience that takes serious offense to the expression may disturb the peace.'⁷⁰ International courts share this view. In *Handyside v. United Kingdom*, the European Court of Human Rights held:

- Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.⁷¹

In addition, in subsection 3 of SF 342, the law does not apply when protesters who are participating in demonstrations with a valid permit are injured. It is permissible under international law to implement a notification regime for upcoming assemblies. However, the Human Rights Committee has made clear that a:

Missouri SB 66

§563.031

1. **A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force, by such other person, unless:**
 - (1) **The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:**
 - a. **He or she has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or**
 - b. **He or she is a law enforcement officer and as such is an aggressor pursuant to section 563.046; or**
 - c. **The aggressor is justified under some other provision of this chapter or other provision of law;**
 - (2) **Under the circumstances as the actor reasonably believes them to be, the person whom he or she seeks to protect would not be justified in using such protective force;**
 - (3) **The actor was attempting to commit, committing, or escaping after the commission of a forcible felony.**
2. **A person shall not use deadly force upon another person under the circumstances specified in subsection 1 unless:**
 - ...
 - (4) **Such force is used against a person who is participating in an unlawful assembly pursuant to section 574.040 and unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual, or is occupied by an individual who has been given specific authority by the property owner to occupy the property, claiming a justification of using protective force under this section.**

- failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences.⁷²

Moreover, a '[I]ack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.'⁷³

As such, Iowa cannot choose to protect protesters who have valid permits and not those who do not.

As mentioned earlier, an Iowa man was charged with Assault by Use or Display of a Dangerous Weapon (Vehicle) after he hit two protesters with his truck at a rally for reproductive freedom on 24 June, 2022. Therefore, it will soon become clear just how much this law shields drivers from civil liability.

Oklahoma goes one step further than either Iowa or Florida. Under Oklahoma's law (HB 1674), enacted April 21, 2021, a driver is immune from criminal liability as well as

civil liability if they injure or kill someone in the course of 'fleeing from a riot', as long as the driver did so 'unintentionally', was 'exercising due care' in the operation of his vehicle, and held a 'reasonable belief' that he needed to flee in order to protect himself.⁷⁴ This law was inspired by an incident in which a [truck driver drove into a BLM protest](#) in Tulsa, Oklahoma, paralyzing one person. The Tulsa County District Attorney [declined to](#)

[charge the driver](#) because he claimed the driver feared for his and his family's safety after protesters began assaulting the truck. However, videos of the incident show that the driver put a handgun on his dashboard and [revved his engine](#) before he drove into the crowd. According to the author of the bill, the law was designed to ensure that [no driver](#) in those circumstances would face criminal or civil charges.

Demonstrators in New York protest the verdict in the trial of Kyle Rittenhouse in Kenosha, Washington, November 19, 2021 (Photo: Ben Von Klemperer/ Shutterstock.com)



Louisiana HB 101

§20 Justifiable homicide

- A. A homicide is justifiable:**
- (5)(a) When committed for the purpose of preventing imminent destruction of property or imminent threat of tumultuous and violent conduct during a riot.**
 - 5(b) For purposes of this Paragraph, “riot” shall have the same meaning as provided by R.S. 14:329.1.**

R.S. 14:329.1 Riot

A riot is a public disturbance involving an assemblage of three or more persons acting together or in concert which by tumultuous and violent conduct, or the imminent threat of tumultuous and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.

Alabama SB 155

§13A-3-25

- (a) A person in lawful possession or control of premises, or a person who is licensed or privileged to be on premises, may use physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.**
- (b) A person may use deadly physical force under the circumstances set forth in subsection If the premises are located within 500 feet of an active riot, when he or she reasonably believes it necessary to use physical force, deadly or otherwise, to prevent the commission of criminal mischief or burglary by the trespasser.**

Alabama Criminal Code §13A-7-23

- (a) A person commits the crime of criminal mischief in the third degree if, with intent to damage property, and having no right to do so or any reasonable ground to believe that he or she has such a right, he or she inflicts damages to property in an amount not exceeding five hundred dollars (USD 500).**

Oklahoma is 1 of 25 states in the country that has a ‘[stand your ground](#)’ law on the books. [Oklahoma’s law](#) states:

- ▶ A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

As such, Oklahoma has already enacted laws that allow people to defend themselves when facing serious threat, rendering this new law superfluous at best, and a concerted effort to allow impunity for killing protesters at worst.

On October 27, 2021, the U.S. District Court for the Western District of Oklahoma issued a preliminary injunction preventing portions of the law from going into effect on November 1. The Court found that the plaintiffs were likely to succeed on the merits of its claim that provisions of the law that covered organizational liability and street obstruction were impermissibly vague and overbroad.⁷⁵ Nevertheless, the other provisions of the law—including the [driver-immunity provision](#)—went into effect on November 1, 2021.

‘Stand your ground’ laws

In a similar trend to driver-immunity laws, eight states have proposed legislation that would allow a person to use deadly force to defend private property or to prevent a violent act. Alabama, Kentucky, Louisiana, Mississippi, Missouri, Ohio, New Jersey, New Hampshire, and South Carolina have all

proposed legislation to this effect.⁷⁶ None of these bills has been enacted as of the writing of this report. However, all of them have been introduced since November 2020, indicating that they might mark the start of a new trend. These legislative efforts appear to be a response to two highly publicized incidents—one in St. Louis, Missouri and one in Kenosha, Wisconsin.

On June 28, 2020, a group of several hundred BLM protesters marched in St. Louis to demand the resignation of Mayor Lydia Krewson. As the protesters passed through a residential neighborhood, Mark and Patricia McCloskey, who lived in the neighborhood, stood in their front yard and [aimed firearms](#) at the passing protesters. The two were charged with felony use of a firearm. Conservative politicians President Donald Trump, Senator Josh Hawley, and others expressed their outrage at the charges. To show their support for the couple, the Republican Party asked the two to speak at the Republican National Convention later that summer.

On August 26, 2020, 17-year-old Kyle Rittenhouse was [charged with homicide](#) after he shot three protesters, killing two. The protesters were demonstrating after a Kenosha police officer shot an unarmed Black man seven times, leaving him paralyzed from the waist down. Rittenhouse, who came to the protest to prevent destruction of property, attempted to disperse demonstrators who were vandalizing cars in front of an auto shop in Kenosha. One demonstrator confronted and chased Rittenhouse. Rittenhouse, fearing for his safety, turned and [killed the man](#) and then shot two more people who chased him as he ran to the police line. After the shooting, many people rallied behind Rittenhouse, arguing that he [shot in self-defense](#). For instance, Fox News host Judge Jeanine Pirro and former Florida attorney

general Pam Bondi referred to Rittenhouse as ‘all-American’ and a ‘little boy out there trying to protect his community.’ At his trial, the prosecution introduced a video taken two weeks before the shooting, in which Rittenhouse appeared to watch several people shoplifting from a CVS pharmacy and say, ‘Bro, I wish I had my fucking AR, I’d start shooting rounds at them.’ On November 19, 2021, Rittenhouse was found not guilty of intentional homicide and four other charges. The jury found that he had acted reasonably to defend himself in Kenosha.

A proposed law (SB 66) in Missouri, which was introduced December 1, 2020 and has subsequently been defeated, would have allowed a person to use deadly force against a demonstrator who was part of an ‘unlawful assembly’ and who unlawfully entered or attempted to enter private property that was owned or leased by the person who used the deadly force.⁷⁷ Missouri Representative Rich Brattin, the sponsor of the proposed bill, has met with the McCloskeys and expressed his support for the couple.⁷⁸

Under Missouri law, a person is part of an ‘unlawful assembly’ if they ‘knowingly assembles with six or more persons and agrees with such persons to violate any of the criminal laws of [Missouri] or the United States with force or violence.’⁷⁹ There is no requirement that force or violence actually occur, or that such force or violence is directed against the property owner. Moreover, there is no requirement that the property owner should reasonably fear an imminent threat of death or serious injury; rather, the mere trespass of private property is sufficient for a property owner to use deadly force.

Under existing Missouri law, deadly force is permissible if it ‘is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a

These laws will ‘provide incentives for actions of white supremacist vigilante groups and allow further violence against Black Lives Matter protesters’.

Clément Voule, UN Special Rapporteur on association and assembly

dwelling, residence, or vehicle occupied by such person.’⁸⁰ This force must be applied only ‘to the extent [a person] reasonably believes such force to be necessary to defend’ themselves.⁸¹ The proposed bill in Missouri expands this justification of deadly force to apply beyond a person’s home, and instead provides a permissible use of deadly force for any trespass during an ‘unlawful assembly.’

This statute is contrary to international law. States have an obligation to create an enabling environment for protests and keep protesters safe from harm from both state actors and private individuals.⁸² That is, ‘[t]he State’s obligation to facilitate extends to taking measures to protect those exercising their rights from violence or interference.’⁸³ If an assembly is not peaceful, its participants forfeit their right to congregate and the State may disperse the assembly. However, even those engaged in a violent protest retain all their other fundamental rights including, of course, their right to life.⁸⁴ States have an obligation to protect all protesters ‘against

possible abuse by non-state actors, such as interference or violence by other members of the public, counterdemonstrators and private security providers.⁸⁵

On February 21, 2022, Louisiana introduced a bill (HB 101) that, if it were enacted, would provide criminal liability to individuals who kill someone during a riot, so long as the killing was committed ‘for the purpose of preventing imminent destruction of property or imminent threat of a tumultuous and violent conduct during a riot.’

In Alabama, a bill (SB 155) was introduced on February 2, 2021 that would make it permissible for a property owner to use deadly force when a riot is occurring nearby, and it is reasonable to believe that deadly force is necessary to prevent the commission of criminal mischief. Under Alabama law, a person commits the crime of riot if ‘with five or more other persons, he wrongfully engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of public terror or alarm.’⁸⁶ Criminal mischief in Alabama occurs when a person damages property to an amount less than USD 500. As such, this statute would have authorized deadly force to stop vandalism or other small amounts of property damage.

These two proposed ‘stand your ground’ laws are not the only bills that have been introduced that would allow the use of lethal force to protect property.⁸⁷ Under international law, the only justification for the use of lethal force is the imminent threat of death or serious injury.⁸⁸ These proposed laws unduly impose restrictions on the right to life in the context of protest. The provisions’ aim is to protect private property or traffic and circulation of vehicles, not the preservation of the life of individuals or third parties in circumstances that may be necessary (i.e. self-defense), contrary

to [international](#) human rights law. The protection of property does not afford a justification for a deprivation of life under international law.

Clément Voule, Special Rapporteur on peaceful assembly and association, has [voiced his concerns](#) over the introduction of bills of this nature across the United States. Voule has expressed fears that these laws will ‘provide incentives for the actions of white supremacist vigilante groups and allow further violence against Black Lives Matter protesters.’ He is concerned that by creating legal protections for those who carry out attacks against BLM advocates, the state governments responsible for these bills are encouraging acts of racial terror.

This trend is likely the most problematic of the nine trends covered in this report. In enacting laws of this nature, the state has,

Deaths of protesters almost certain to increase

This trend is likely the most problematic of the nine trends covered in this report. In enacting laws of this nature, the state has, in effect, declared ‘open season’ on killing or seriously injuring protesters who are blocking roads or are perceived as a threat to private property. Given that these incidents occurred regularly when those responsible for the deaths could be held accountable, the inevitable result of this level of impunity will be an increase in the number of incidents in which a protester is seriously injured or killed by someone who disagrees with their message.

Florida HB 1/SB 484

§3. Section 768.28

5(b). A municipality has a duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly based on the availability of adequate equipment to its municipal law enforcement officers and relevant state and federal laws. If the governing body of a municipality of a person authorized by the governing body of the municipality breaches that duty, the municipality is civilly liable for any damages including damages arising from personal injury, wrongful death, or property damages proximately caused by the municipality's breach of duty. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

in effect, declared 'open season' on killing or seriously injuring protesters who are blocking roads or are perceived as a threat to private property. Given that these incidents occurred regularly when those responsible for the deaths could be held accountable, the inevitable result of this level of impunity will be an increase in the number of incidents in which a protester is seriously injured or killed by someone who disagrees with their message.

3. Encouragement of aggressive state action against protesters

In order to ensure a containment response to protesters, regardless of the necessity and proportionality consideration of other possible methods, several states have enacted laws which impose liability on local officials who fail to stop protests or act to stop LEOs from dispersing assemblies. Other states have enacted and introduced laws that grant civil immunity to LEOs who kill or injure protesters, and even bystanders, in the course of dispersing assemblies. West Virginia has enacted, and Mississippi, North Carolina, and Indiana have introduced, legislation to this effect.⁸⁹ The impunity that these bills grant to LEOs may result in, or even encourage, excessive use of force against protesters.

Moreover, several states have enacted laws and introduced legislation that waive immunity for government officials or political subdivisions if they fail to respond aggressively to protests. Other states have made efforts to create a new civil right of action against a municipal government for failure to respond 'appropriately' to a protest.⁹⁰ Since 2017, 15 states and the federal government have introduced 26 bills to this effect.⁹¹ Thus far, however, Florida is the only state that has enacted legislation that holds government officials or municipalities civilly liable for property damage or personal injury caused during a protest or riot.⁹² In doing so, these proposed laws, like those granting immunity to LEOs, raise the risk of excessive use of force and violence against protesters.

Florida's law created a new civil cause of action against a municipal government that fails to 'respond appropriately to protect persons and property during a riot or unlawful assembly.'⁹³ As such, local governments could be found liable for damages for personal injuries or to property if their response is found to be inadequate.⁹⁴ As explained in previous sections, due to the overbroad definitions of both 'riot' and 'unlawful assembly' under Florida law, this provision would likely encourage municipal governments to respond aggressively to even peaceful protests.

West Virginia HB 4618

§61-6-1 Suppression of riots and unlawful assemblages

All members of the West Virginia State Police, the Division of Protective Services, all sheriffs within their respective counties and all mayors within their respective jurisdiction, may suppress riots, routs, and unlawful assemblages. It shall be the duty of each of them to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such member of the West Virginia State Police, or of the Division of Protective Services, sheriff or mayor giving the command, and any other present, shall command the assistance of all persons present, and of all or any part of other law-enforcement personnel available to him or her, as need be, in arresting and securing those so assembled. If any person present, on being required to give his or her assistance, depart, or fail to obey, he or she shall be deemed a rioter.

§61-6-5 Death of person in suppression of riots and unlawful assemblages

If, by any means taken under the authority of this article to disperse any such assemblage or arrest those engaged in it, any person present, as spectator or otherwise, be killed or wounded, and neither malice, nor premeditation be present, any member of the West Virginia State Police, the Division of Protective Services, sheriff, or mayor exercising such authority, and everyone acting under his or her order, shall be held guiltless.

State law enforcement officials have an obligation to create an enabling environment for protest. The main functions of law enforcement in the context of assemblies are to ensure that the protest can take place as intended and to work to minimize any potential for physical injury or property damage.⁹⁵ For those reasons, '[l]aw enforcement officials should seek to de-escalate situations that might result in violence' and must use only the minimum force necessary to keep the peace.⁹⁶

The law enacted in Florida does not create an enabling environment for protest. Nor does it help ensure that LEOs only use the minimum force necessary. Instead, the law encourages municipal governments to respond aggressively to protests for fear of being held liable for an inadequate response. This motivation would almost certainly have a deleterious effect on the right to peaceful

assembly without fear of state violence against protesters.

As stated earlier, the U.S. District Court for the Northern District of Florida has issued a preliminary injunction that enjoins the enforcement of this law 'as it pertains to the definition of "riot," until otherwise ordered'.⁹⁷ As such, this provision, as it applies to law enforcement agencies responding to a riot, is temporarily enjoined.

West Virginia enacted a law on March 10, 2018 that encourages LEOs to respond to protests without regard for the safety and well-being of demonstrators, bystanders, or journalists covering the protest. In 2018, West Virginia granted the West Virginia Capitol Police, State Police, sheriffs, and mayors complete immunity for deaths or injuries of individuals they cause during the course of dispersing riots and unlawful assemblies.⁹⁸

The law (HB 4618) protects police from liability for the deaths of anyone present ‘as spectator or otherwise’ and allows the police to use ‘any means’ to disperse riots or unlawful assemblies.⁹⁹ Moreover, if a bystander is asked by LEOs to assist in the dispersal of a protest and refuses, that bystander ‘shall be deemed a rioter’ under the law, leaving them subject to arrest and without recourse for state violence inflicted upon them.¹⁰⁰ The language used in this bill would therefore remove liability from West Virginia LEOs should they kill protesters, bystanders, or journalists reporting on a protest.¹⁰¹ This law was passed in response to a [state-wide strike](#) by West Virginia teachers in 2018.

Under international law, it is not permissible for states to grant blanket immunity to LEOs for all killings which occur during the course of dispersing protests. The Human Rights Council states that: ‘The failure of a State to properly investigate suspected unlawful or arbitrary killing is a violation of the right to life itself.’¹⁰² All allegations of rights violations in the context of assemblies must be investigated by the state.

LEOs should resort to force only in ‘exceptional’ circumstances.¹⁰³ Any use of force must be only the minimum amount necessary, targeted at specific individuals, and proportionate to the threat posed.¹⁰⁴ These principles are even more important when LEOs are using lethal force, including the use of firearms. According to the Human Rights Council, ‘Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries.’¹⁰⁵ This is true of any use of potentially lethal force by LEOs.¹⁰⁶ Moreover, firearms, or any other lethal force, must only be used in situations when no other option exists—that is, the use must be absolutely necessary.¹⁰⁷ As such, ‘Firearms should never be used simply to disperse an assembly.’¹⁰⁸

Moreover, authorities must disperse assemblies only ‘when strictly unavoidable.’¹⁰⁹ Before dispersing a crowd, LEOs must take all reasonable measures to enable the assembly by providing a safe environment. It is only in situations when ‘violence is serious and widespread and represents an imminent threat to bodily safety or property’ and all other measures have failed that dispersal

Has West Virginia forgotten that all people are equal before the law?

West Virginia enacted a law on 10 March 2018 that encourages LEOs to respond to protests without regard for the safety and well-being of demonstrators, bystanders, or journalists covering the protest.

In 2018, West Virginia granted the West Virginia Capitol Police, State Police, sheriffs, and mayors complete immunity for deaths or injuries of individuals they cause during the course of dispersing riots and unlawful assemblies.

The law protects police from liability for the deaths of anyone present ‘as spectator or otherwise’ and allows the police to use ‘any means’ to disperse riots or unlawful assemblies. Moreover, if a bystander is asked by LEOs to assist in the dispersal of a protest and refuses, that bystander ‘shall be deemed a rioter’ under the law, leaving them subject to arrest and without recourse for state violence inflicted upon them. The language used in this bill would therefore remove liability from West Virginia LEOs should they kill protesters, bystanders, or journalists reporting on a protest. This law was passed in response to a state-wide strike by West Virginia teachers in 2018.

North Carolina HB 321

§14.252.2

- (a) It shall be unlawful for a public official to interfere with a law enforcement officer in the performance of the officer's duties by causing or attempting to cause, in any way, a law enforcement officer to refrain from any of the following:**
- (1) Enforcing the laws of this State.**
 - (2) Defending the citizens of this State against criminal activity.**
 - (3) Defending the property of citizens of this State against criminal activity.**
 - (4) Defending the property of this State against criminal activity.**

§14-252.5

A law enforcement officer using reasonable force under the circumstances and acting in good faith to enforce the laws of this State, to defend the citizens of this State against criminal activity, to defend the property of citizens of this State against criminal activity, and to defend the property of this State against criminal activity shall be immune from civil and criminal liability for the death or injury of any person resisting the law enforcement officer in the performance of these duties. Any death or injury under the circumstances described in this subsection shall be deemed to have been caused by the individual who is killed or injured.

is appropriate.¹¹⁰ Laws which encourage an aggressive police response and the dispersal of assemblies before this threshold has been reached violate the right to peaceful assembly. According to the Human Rights Committee, states must 'consistently promote a culture of accountability for law enforcement officials during assemblies.'¹¹¹

Beyond the obligation of law enforcement to facilitate the right of people to peaceful assembly, an additional key function of law enforcement is to protect the safety and rights of monitors and bystanders.¹¹² Article 19(2) of the ICCPR, which guarantees the right to seek and receive information, guarantees all people the right to observe and monitor assemblies.¹¹³ The UN Human Rights Committee has confirmed that 'States have an obligation to protect the rights of assembly monitors ... irrespective of whether an assembly is peaceful.'¹¹⁴ The right to observe or monitor an assembly exists even if the assembly is declared unlawful or is dispersed.¹¹⁵

West Virginia's law grants LEOs the authority to disperse protests when not strictly necessary. It also provides LEOs with blanket immunity for any people killed, violating the state's obligations to protect protesters, bystanders, and journalists who are monitoring the protest. Given that the law was enacted in response to a teachers' strike, which was adamantly opposed by the state government, it seems likely that this law was enacted to give LEOs the power to quell protests of the government, and it seems inevitable that this law will chill the fortitude of those opposed to government policies to demonstrate in protest.

On March 16, 2021, North Carolina introduced legislation (HB 321) that would not only provide civil and criminal liability to LEOs who kill or injure people who resist attempts by the state to disperse a protest, but would also impose criminal liability on government officials who 'interfere' with LEOs by 'attempting to cause' them not

Florida HB 1/SB 484

§870.01

(3) A person commits aggravated rioting if, in the course of committing a riot, he or she:

...

(e) By force, or threat of force, endangers the safe movement of a vehicle traveling on a public street, highway, or road.

to enforce the law or defend persons or property.¹¹⁶ While the liability does not apply only to government officials who do not respond forcefully to protests, the language of the bill makes it clear that this was a primary motivation behind the legislation. In the introduction to the law, the bill states that criminal liability would be imposed upon public officials who cause LEOs to 'stand down' in the face of 'murder, rioting, looting, physical assault, damage to public or private property, pulling down statues or other memorials or monuments, vandalism, arson, or any other criminal act.'¹¹⁷ Nearly every crime listed relates in some way to protests, and the fact that pulling down statues is listed separately, instead of other much more serious crimes, points to the motivation behind this proposed law. Fortunately, however, this legislative effort was [defeated](#).

Beyond the state-level efforts, Congress has introduced legislation aimed at the same goal. Lawmakers in both the U.S. House of Representatives and the U.S. Senate introduced legislation in 2020 that would empower the U.S. Attorney General to withhold federal funding from state or local governments that failed to properly police a riot or prosecute those who participated in the riot.¹¹⁸ The bill would have also created a federal cause of action if local authorities failed to take action that would prevent or mitigate injury or property destruction during a riot.¹¹⁹ The [bill did not pass](#) either the House or Senate.

This trend is dangerous and contrary to international law. As explained by the Human Rights Committee:

- ▶ In the case of lawful and peaceful assembly, no force may be used. If there is good reason to disperse an unlawful assembly that is peaceful, only the minimum force necessary may be used. Lethal force clearly has no role to play.¹²⁰ By granting LEOs blanket immunity for deaths they cause in dispersing protests, and by promoting overly aggressive police responses against potentially peaceful protests, the laws enacted in West Virginia and Florida and the bills proposed elsewhere are impermissible under international law.

Arkansas, Florida, Iowa, Oklahoma, South Dakota, and Tennessee have each passed legislation which imposes substantial criminal penalties on people simply for blocking traffic during a protest.

4. Disproportionate penalties for blocking public ways and access to public buildings

In the aftermath of the BLM protests in June 2020, several states enacted laws which imposed harsh penalties on people who blocked traffic during protests. Arkansas, Florida, Iowa, Oklahoma, South Dakota, and Tennessee have each passed legislation which imposes substantial criminal penalties on those who block traffic during a protest.¹²¹ In total, at least 29 states have attempted to enact at least 94 bills which would impose some form of harsh penalty on protests which block traffic.¹²² Each of these bills is notable for the harsh criminal penalties imposed for blocking public ways.

In addition, state legislatures have made efforts to criminalize protests of the state legislatures themselves. Tennessee and Utah have enacted laws that impose criminal punishment for protests of legislative sessions.¹²³ Nine other states have proposed similar legislation.¹²⁴

In Florida, a ‘riot’ that ‘endangers the safe movement of a vehicle’ constitutes an ‘aggravated riot’—a second-degree felony punishable by up to 15 years’ imprisonment.¹²⁵ As such, protesters in Florida who block traffic, even temporarily, could face more than a decade in prison. Similar laws have been enacted in other states, each of which carries a penalty of at least one year’s imprisonment for blocking a street or sidewalk.

Under international law, a protest which blocks public ways is not necessarily an impermissible protest. The UN Human Rights Committee has confirmed that ‘disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.’¹²⁶ Further, restrictions on protests that block traffic are not necessary

to protect the public order. ‘Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.’¹²⁷

The public can conduct assemblies anywhere to which they have access.¹²⁸ Assemblies are as legitimate a use of public spaces, which include roads and sidewalks, as commercial activity or the movement of vehicles. As stated earlier, some disruption to commercial activity or movement must be tolerated to enable peaceful demonstrations.¹²⁹ That said, LEOs are justified in dispersing assemblies on public roads that cause ‘a high level of disruption’¹³⁰ and are ‘serious and sustained.’¹³¹ According to the Special Rapporteur on assembly, examples of the level of disruption to public ways that warrant dispersal include protests that block the emergency entrance to a hospital or a major highway for days.¹³² A temporary disruption of traffic does not constitute a high level of disruption.

The U.S. District Court for the Northern District of Florida has issued a preliminary injunction that enjoins the enforcement of this law (HB 1/SB 484) ‘as it pertains to the definition of “riot,” until otherwise ordered.’¹³³ The Court found that the plaintiffs in that case were likely to prevail on the merits of their claim that ‘riot,’ as defined by the law, is unconstitutionally overbroad and vague. As such, this provision, is temporarily enjoined.

On March 30, 2020, Utah enacted criminal penalties for individuals who engage in ‘disorderly conduct’ at state legislature meetings or meetings of other government officials.¹³⁴ Under the law, ‘disorderly conduct’ can include making ‘unreasonable noises’ from a private place that can be heard at an official meeting, obstructing pedestrian traffic at a meeting, and refusing to leave a meeting when asked by an LEO.¹³⁵

Utah SB 173

§5. Section 76-9-102

(2) An individual is guilty of disorderly conduct if:

...

- (b) intending to cause public inconvenience, annoyance, or alarm, the person:
 - (i) engages in fighting or in violent, tumultuous, or threatening behavior;
 - (ii) makes unreasonable noises in a public place or an official meeting;
 - (iii) makes unreasonable noises in a private place which can be heard in a public place or an official meeting; or
 - (iv) obstructs vehicular or pedestrian traffic in a public place or an official meeting.

Florida law: 10 years in prison for blocking traffic

In Florida, a 'riot' that 'endangers the safe movement of a vehicle' constitutes an 'aggravated riot'—a second-degree felony punishable by up to 15 years' imprisonment.

As such, protesters who block traffic, even temporarily, in Florida could each face more than a decade in prison. Similar laws have been enacted in other states, each of which carries a penalty of at least 1 year's imprisonment for blocking a street or sidewalk. Under international law, a protest which blocks public ways is not necessarily an impermissible protest. The UN Human Rights Committee has confirmed that 'disruption of vehicular or pedestrian movement or daily activities do not amount to "violence".' Further, restrictions on protests that block traffic are not necessary to protect the public order. 'Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.'

Similarly, on August 20, 2020, Tennessee enacted a law under which protesters who 'interfere with' a lawful meeting of the state legislature face up to one year in jail.¹³⁶ As in Utah, a loud protest could constitute interference under the law.¹³⁷ Finally, Oklahoma has proposed restrictions on all demonstrations near the state capital—the proposed law would prohibit obstructing sidewalks, walkways, or entrances at the capitol grounds, placing a tent on the capitol grounds, and affixing signs to any tree or structure on the capitol grounds.¹³⁸

International law is exceptionally protective of open political debate and the right to criticize public officials. The UN Human Rights Committee has stressed the importance of free expression in the political sphere as a means of upholding the democratic form of government.¹³⁹ In General Comment No. 25, concerning participation in public affairs, the Committee wrote, 'the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential.'¹⁴⁰ As such, protests at state capitol buildings deserve more, not fewer, protections from state authorities. According to the Committee, political demonstrations 'enjoy a heightened level of accommodation and protection.'¹⁴¹ Because state capitol buildings are public spaces and because political assemblies

Indiana SB 34

Section 1, Chapter 14

2. As used in this chapter, “state agency” means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of the state, including the executive, administrative, judicial, and legislative departments of state government. The term includes the following:

- (1) A state elected official’s office.**
- (2) A state educational institution.**
- (3) A body corporate and politic of the state created by state statute.**
- (4) The Indiana lobby registration commission established by IC 2-7-1.6-1.2**

3(a). Except as provided in subsection (b), a state agency:

- (1) may not hire a person convicted of rioting; and**
- (2) shall discharge an employee convicted of rioting; if the offense was committed after June 30, 2021.**

Section 2, Chapter 2

3(a). Except as provided in subsection (b), as used in this chapter, “state or local benefit” means:

- (1) any grant, contract, loan, professional license, or commercial license provided by a state agency or a unit, or by appropriated funds of the state or a unit; and**
- (2) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by a state agency or a unit, or by appropriated funds of the state or a unit.**

§4(a). Except as provided in subsection (b) and in section 5 of this chapter, a state agency, a unit, or both, may not provide a state or local benefit to a person convicted of rioting if the offense was committed after June 30, 2021, unless the denial of a benefit would violate the Constitution of the State of Indiana, the Constitution of the United States, or federal law.

enjoy heightened levels of accommodation, ‘[a]ny restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed.’¹⁴²

5. Loss of public benefits and public employment for those convicted of protest-related crimes

Beyond criminal sanctions, states have imposed administrative sanctions on protesters in an effort to punish and deter peaceful protest. Twelve states and the federal government have all introduced bills that mandate the dismissal of any state or

local government employee convicted of protest-related criminal offenses; disqualify people convicted of protest-related offenses from receiving public assistance, including food assistance, education grants, and unemployment assistance; and bar anyone convicted of a protest-related offense from ever holding public office.¹⁴³

In addition to these efforts by state governments to deprive protesters of public assistance benefits and state employment, 17 states have also undertaken efforts to impose administrative sanctions on public university students for their protest.¹⁴⁴



Georgia's bill has been enacted into law, and bills in Illinois and Texas are still working their way through the legislative process.¹⁴⁵

Given the timing of when these bills were initially introduced and the specific language the bills employed, it seems likely that they were introduced in response to the protests surrounding the Breitbart writer and right-wing provocateur [Milo Yiannopoulos's](#) 2017 appearance at University of California Berkeley. Yiannopoulos, a controversial figure, was invited by the Berkeley College Republicans to speak, and, in response, more than 1,500 demonstrators gathered to protest his appearance. The protests were marked by violent clashes between protesters and counter-protesters—at least six people were injured, and the campus suffered [USD 100,000 worth of property damage](#).

Likewise, a bill proposed in Indiana on January 14, 2021 would have prevented a person convicted of rioting from receiving state and local benefits, including healthcare

Nonviolent civil disobedience demonstration demanding safe and legal abortion access, Washington, DC, June 30, 2022; under IHRL, protest gatherings that block public roads are legitimate despite any temporary disruption they may cause (Photo: Luigi Morris/Shutterstock.com)

and educational benefits.¹⁴⁶ Moreover, in Indiana, any person convicted of rioting would be barred from holding state government employment.¹⁴⁷ As stated earlier, under a bill currently proposed in Indiana, 'to be guilty of "rioting," one must be a member of an "unlawful assembly" and engage in "tumultuous conduct".' Under the law, an 'unlawful assembly' is defined as an assembly that engages in tumultuous conduct. The definition of 'tumultuous conduct' under the law includes that which 'is likely to result in ... the obstruction of law enforcement or other governmental function.' As such, a member of a three-person peaceful protest whose conduct is likely to interfere with a legislative assembly, for instance, could be convicted of rioting in Indiana. As a result, demonstrators who have engaged in peaceful protests would

potentially lose all state and local benefits, and, if employed by the state, could lose their job. [Indiana SB 34](#) was not signed into law.

Similarly, Georgia introduced legislation on February 11, 2021 that would ban anyone convicted of ‘unlawful assembly’—a crime with a vague and overbroad definition—from receiving state or local unemployment benefits.¹⁴⁸ [Georgia SB 171](#) was approved by the Senate on March 15, 2022 but was not passed in the House. Finally, Minnesota’s state legislature introduced a bill on January 28, 2021 that would have disqualified a person convicted of a protest-related offense from receiving food assistance, education loans and grants, and unemployment assistance.¹⁴⁹

The denial of public benefits as a result of engaging in peaceful protest is contrary to international law. The Human Rights Committee has stated:

- Where criminal or administrative sanctions are imposed on organizers of or participants in a peaceful assembly for their unlawful

conduct, such sanctions must be proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences, or suppress conduct protected under the Covenant.¹⁵⁰

These administrative sanctions are neither necessary nor proportionate in achieving any governmental objective. Mandatory dismissals for government employees, the loss of public assistance benefits, and mandatory suspensions and expulsions for campus speech are by no means the least intrusive measures in protecting public order or public safety. Moreover, the penalties are excessive. Excessive administrative sanctions for protest-related actions ‘raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.’¹⁵¹

Given the harsh nature of these punishments, it appears probable that the sanctions are intended to discourage participation in assemblies and to cause a chilling effect among participants—an aim that is incompatible with international law.¹⁵²

Given the harsh nature of these punishments, it appears probable that the sanctions are intended to discourage participation in assemblies and to cause a chilling effect among participants—an aim that is incompatible with international law.

Missouri tried to demand that the public sector fire workers who strike

In 2017, Missouri enacted a law which barred public employees from picketing. The law required that all public-sector labor agreements provide for the ‘immediate termination’ of any public employee who ‘pickets over any personnel matter.’ In a unanimous decision, the Missouri Supreme Court found that HB 1413 violated the U.S. Constitution and permanently struck down the law.

Missouri HB 1413

§105.585(2)

Every labor agreement shall expressly prohibit all strikes and picketing of any kind. A strike shall include any refusal to perform services, walkout, sick-out, sit-in, or any other form of interference with the operations of any public body. Every labor agreement shall include a provision acknowledging that any public employee who engages in any strike or concerted refusal to work, or who pickets over any personnel matter, shall be subject to immediate termination of employment.

Michigan HB 6269

§57aa(1)

If an individual is charged with looting, vandalism, or a violent crime in relation to or stemming from civil unrest, the department shall revoke his or her public assistance benefits. The individual is ineligible for public assistance benefits for 1 year.

If participants in an assembly are not peaceful, they forfeit their right to peaceful assembly. They do not, however, forfeit any other right, including their rights to due process and to participate in the political process.¹⁵³ In addition, as explained by the Human Rights Committee, ‘No one should be harassed or face other reprisals as a result of their presence at or affiliation with a public assembly.’¹⁵⁴

In 2017, Missouri enacted a law (SB 1413) which barred public employees from

picketing.¹⁵⁵ The law required that all public-sector labor agreements provide for the ‘immediate termination’ of any public employee who ‘pickets over any personnel matter.’¹⁵⁶ In a unanimous decision, the Missouri Supreme Court found that HB 1413 [violated the U.S. Constitution](#) and permanently struck down the law.

[Georgia enacted a law](#) (SB 339) on May 8, 2018 that creates a system of disciplinary sanctions at public universities and community colleges that would prohibit

Georgia SB 339 (as introduced)

§1. Section 20-3-48

The board of regents shall develop and adopt a policy on free expression that contains, at least, the following statements:

...

- (4) That any person lawfully present on campus may protest or demonstrate there, provided that protests and demonstrations that infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction.**

...

- (9) That any student who has twice been found responsible for infringing on the expressive rights of others shall be suspended for a minimum of one year or expelled.**

and sanction students who are involved in 'protests or demonstrations that infringe upon the rights of others to engage in or listen to expressive activity' on campus. When this law was originally introduced, it included specific sanctions—mandating that any student who was twice 'found responsible for infringing on the expressive rights of others,' which could include protesting a campus speaker, to be [suspended for a year or expelled](#). The specific sanctions were removed before the bill was enacted into law, however. Illinois's proposed legislation uses the same language as the Georgia law to impose sanctions on protesters who are protesting a campus speaker.¹⁵⁷ In Texas, the bill mentioned earlier that threatens to impose criminal liability for 'threatened terroristic violence' would incorporate the offense into the Education Code, which would potentially impose administrative sanctions on student protesters engaging in peaceful protest.¹⁵⁸

Finally, though it was not enacted, it is worth noting Michigan's attempt to deny public benefits to protesters. Under Michigan's proposed bill (HB 6269), introduced on September 29, 2020, a person could lose public assistance benefits for one year if they were 'charged with looting, vandalism, or a violent crime in relation to or stemming from civil unrest.'¹⁵⁹ Under the bill, 'civil unrest' includes unlawfully blocking a sidewalk or roadway,¹⁶⁰ and 'violent crime' includes 'a crime involving ... intimidation, threat, or coercion.'¹⁶¹ As a result, protesters who were merely charged with—not convicted of—a crime while blocking a sidewalk would potentially lose all public assistance benefits for a year.

6. Excessive penalties for 'defacing' public monuments and memorials

Many of the protests over the past few years in the U.S. have been marked by efforts by

local governments to remove Confederate monuments, as well as attempts by some protesters to tear down the statues themselves. In this context, several states have passed laws and introduced legislation in an attempt to place severe penalties on those convicted of 'defacing' memorials.¹⁶² In several states, laws have been proposed or enacted under which a demonstrator would commit a crime punishable by a lengthy prison sentence for simply drawing a temporary chalk message on a memorial.¹⁶³

After the 2015 Charleston church shooting, there have been many efforts by local municipalities to remove statues of Confederate leaders. Since the shooting, more than [70 Confederate monuments](#) have been taken down across the nation. In response to these efforts, several states blocked the ability of local governments to remove these statues without state permission. Moreover, right-wing protests, including the 2017 'Unite the Right' rally, have taken place, ostensibly in support of [keeping Confederate memorials](#) displayed.

During the George Floyd protests in the summer of 2020, this issue returned to the forefront of U.S. politics. Cities across the U.S. [removed statues](#) of Confederate generals and politicians. In addition, protesters [tore down](#) or damaged statues in San Francisco, Portland, Richmond, Washington DC, and other cities. This issue finally came to a head after protesters in Washington DC attempted to remove a statue of Andrew Jackson that was located across the street from the White House. Conservative politicians decried the actions taken by protesters to tear down statues and memorials. President Donald Trump issued an executive order that built upon the existing Veterans' Memorial Preservation Act, threatening those responsible for [damaging or removing statues](#) with up to 10 years' imprisonment. [Trump stated](#), '[The protesters] are bad



Above: Standing Rock Solidarity Rally in protest at the Dakota Access Pipeline, Portland, Oregon, September 9, 2016 (Photo: Diego G. Diaz/Shutterstock.com)

Below: Statue of George Washington, Baltimore, Maryland; new laws in some states entail vague definitions of, and disproportionate punishments for, defacement of monuments (Photo: Shiva photo/Shutterstock.com)



Florida HB 1/SB 484

§10. Section 806.13

(3) Any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial or historic property, as defined in s. 806.135(1), and the value of the damage to the memorial or historic property is greater than USD 200, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A court shall order any person convicted of violating this subsection to pay restitution, which shall include the full cost of repair or replacement of such memorial or historic property.

people. They don't love our country.' Arkansas Senator Tom Cotton likewise called on the federal government to use the Veterans' Memorial Preservation Act to [bring charges](#) against demonstrators.

In response to the destruction and damage to memorials by protesters, or perhaps in response to calls by the then-President, state legislatures across the country began to introduce and enact laws that imposed lengthy prison sentences on those convicted of 'defacing' government monuments. Since 2017, 14 states have introduced 24 bills imposing harsh penalties for 'defacing' monuments.¹⁶⁴ Of these, laws have been enacted in Arkansas, Florida, and Iowa.¹⁶⁵

Under Florida (HB 1/SB 484) and Iowa (SF 342) law, defacing a memorial is a felony punishable by up to five years' imprisonment.¹⁶⁶ In Florida, because 'defacing' is defined as causing USD 200

or more worth of damage, it is likely that a demonstrator would be committing a felony simply by spray-painting a statue.¹⁶⁷

It is, of course, reasonable for states to criminalize the destruction of, or damage to, public property. It is not a violation of the right to freedom of expression or freedom of assembly for these acts to be prohibited. It is, however, a violation of international law for the law to be overbroad or vague or for the punishment to be disproportionate. In addition, laws which discriminate against certain viewpoints are contrary to international law. Thus, it would constitute a violation of international law if, in enacting these new laws, state legislators acted on a motivation to suppress certain speech. Legislatures should not work to criminalize and punish speech with which they disagree.

First, due to the vague language and overbreadth of Florida and Iowa's laws,

Iowa SF 342

Section 42, §716.4, subsection 1, Code 2021

1. Criminal mischief is criminal mischief in the second degree if any of the following apply:

- ...
- b. The acts damaged, defaced, altered, or destroyed any publicly owned property, including a monument or statue. In addition to any sentence imposed for a violation of this paragraph, the court shall include an order of restitution for any property damage or loss incurred as a result of the offense.**

Florida and Iowa legislation: disproportionate punishment for poorly defined offenses

First, due to the vague language and overbreadth of Florida and Iowa's laws, they are not 'provided by law' and are therefore incompatible with international law. As stated earlier, for a restriction to be provided by law, it must be set down in formal legislation and must not be vague. This helps ensure that state authorities do not have the ability to exercise arbitrary discretion in the application of laws and that individuals have the ability to know whether the actions they are taking violate the law. Here, many of the laws do not define what it means to 'deface' a memorial. It is possible that even temporary chalk drawings and other conduct that causes no lasting damage would constitute 'defacement' and result in a violation of the laws. This vagueness, combined with the indefiniteness of what constitutes a 'riot' or 'unlawful assembly', leaves demonstrators in the dark as to how they can regulate their behavior to ensure they are complying with state law.

Second, these laws impose grossly disproportionate criminal penalties—including potential prison sentences of up to 5 years. The severity of the sentence can only be understood as a punishment of expression that the state finds distasteful and as an attempt to cause a chilling effect—impermissible motives under international law.

they are not 'provided by law' and are therefore incompatible with international law. As stated earlier, for a restriction to be provided by law, it must be set down in formal legislation and must not be vague. This helps ensure that state authorities do not have the ability to exercise arbitrary discretion in the application of laws and that individuals have the ability to know whether the actions they are taking violate the law.¹⁶⁸ Here, many of the laws do not define what it means to 'deface' a memorial. It is possible that even temporary chalk drawings and other conduct that causes no lasting damage would constitute 'defacement' and result in a violation of the laws. This vagueness, combined with the indefiniteness of what constitutes a 'riot' or 'unlawful assembly', leaves demonstrators in the dark as to how they can regulate their behavior to ensure they are complying with state law.

Second, these laws impose grossly disproportionate criminal penalties—including potential prison sentences of up to five years. The severity of the sentence can only be understood as a punishment of expression that the state finds distasteful and as an attempt to cause a chilling effect—impermissible motives under international law.¹⁶⁹

The Iowa and Florida state legislatures are most likely attempting to criminalize expressive conduct with which they disagree.

Georgia HB 289

Section 9. Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 50-3-1, relating to description of state flag, militia to carry flag, defacing public monuments, and obstruction and relocation of monuments, as follows:

(2)(A) Except as provided for under subparagraph (B) of this paragraph, it shall be unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile, or abuse contemptuously any publicly owned monument located, erected, constructed, created, or maintained on real property owned by an agency or by the State of Georgia. No officer or agency shall remove or conceal from display any such monument for the purpose of preventing the visible display of the same. A violation of this paragraph shall constitute a misdemeanor.

(B) Any person who violates Code Section 16-11-33 [participating in an unlawful assembly] while mutilating, defacing, defiling, or abusing contemptuously any publicly owned monument, cemetery, or structure located, erected, constructed, created, or maintained on real property owned by any agency or by the State of Georgia shall be guilty of a felony and, upon conviction thereof, shall be punished by an imprisonment for not less than one nor more than 15 years or a fine of not less than USD 1,000.00 nor more than USD 10,000.00, or both. A court shall order any person convicted of violating this section to pay restitution, which shall include the full cost of repair or replacement of such memorial.

The Iowa and Florida state legislatures are most likely attempting to criminalize expressive conduct with which they disagree. States are attempting to preserve the symbols—the monuments and memorials—that the states themselves have chosen to build and promote. This discriminatory intent becomes clear when one examines the laws in these states that criminalize vandalism of property other than government

monuments. In Florida, under §806.13 of its criminal code, for criminal mischief to be a felony of the third degree, the damage to property must be USD 1,000 or greater.¹⁷⁰ Anything less than that constitutes various levels of misdemeanor. If the property that is damaged is a memorial, however, only USD 200 worth of damage is necessary for the offense to constitute a felony of the third degree. Similarly, in Iowa, property damage

Arkansas HB 1508

Section 6, §5-54-201(1)(F)

As used in this subchapter:

(1) “Act of terrorism” means:

...

(F) Any act that causes substantial damage to or destruction of:

...

(ii) Any building, facility, or monument used, owned, or maintained by:

(a) The United States government;

(b) State government;

(c) Any unit of local government.

must exceed USD 1,500 in order to constitute a Class D felony.¹⁷¹ The only exception to this amount is for public monuments, where even a negligible amount of damage constitutes a Class D felony. These disparities in punishment can only be explained by the state legislatures' motivation to punish the intended message behind the conduct.

As stated earlier, the U.S. District Court for the Northern District of Florida has issued a preliminary injunction that enjoins the enforcement of this law 'as it pertains to the definition of "riot," until otherwise ordered.'¹⁷² However, this provision does not rely upon the definition of 'riot', and is therefore currently in effect.

Five other states—Georgia, Indiana, New Jersey, Ohio, and Oklahoma—have also introduced legislation that would make the defacement of memorials a felony.¹⁷³ The maximum punishment for the defacement of a monument under these bills would be 15 years' imprisonment.

Two of these bills—those introduced in Georgia and Oklahoma—best demonstrate the danger these legislative efforts pose to peaceful protesters. In Georgia HB 289 states that, 'defacing, defiling, or abusing contemptuously' a state-owned or maintained monument or other structure during an 'unlawful assembly' is punishable by at least 1 year, and up to 15 years in prison.¹⁷⁴ Because of the vague and overbroad definition of 'unlawful assembly' in Georgia, a person who draws in chalk during a peaceful protest may be guilty of this offense. Similarly, under Oklahoma's proposed legislation, it is a felony to vandalize or deface any structure owned by a government entity while participating in a riot.¹⁷⁵ 'Defacing' and 'vandalizing' are [not defined in the law](#), and 'riot' is defined as a group of three or more people who make 'any threat to use force.' Thus, as in Georgia, it

is possible that a demonstrator in Oklahoma who creates temporary chalk drawings on the sidewalk would be committing a felony if this bill becomes law.

In Arkansas (HB 1508), under a law enacted on April 29, 2021, an act that causes 'substantial damage' to a public monument constitutes an 'act of terrorism.'¹⁷⁶ Originally, this provision only covered buildings or facilities used by the government. The only amendments to the provision were to add the word 'monument' and the words 'owned' and 'maintained.' Thus, in April 2021, the Arkansas government acted to ensure that damage to monuments was included as an 'act of terrorism.' Due to the vague language of what constitutes 'substantial damage', it is possible, even if it is not likely, that drawing graffiti could be an act of terrorism under the law. According to the [Arkansas Natural Resources Commission](#), substantial damage is 'when the total cost of repair equals or exceeds 50 percent of the pre-damage market value of the structure.' Nevertheless, an act of terrorism is a Class B felony, punishable by up to 20 years' imprisonment and a fine of up to USD 15,000. As such, regardless of the threshold for substantial damage, this punishment is grossly disproportionate to the damage or destruction of a government monument.

7. Disproportionate penalties for protesting near pipelines

In response to the protests surrounding the Dakota Access Pipeline in North Dakota, several states have imposed disproportionate penalties on protests that take place near pipelines. In April 2016, protesters gathered at the construction site of the Dakota Access Pipeline to [protest against the project](#), which failed to consult members of the Standing Rock Sioux Tribe before construction was authorized in an area containing culturally and historically significant sites.¹⁷⁷ Over the next year, thousands of demonstrators gathered in an effort to stop

Oklahoma suppresses environmental protest and political dissent

In a 2017 communication to the United States, the Special Rapporteurs on expression and assembly expressed concern over the overbroad nature of Oklahoma's law. Specifically, the Special Rapporteurs worried that the vague definitions of 'tampering' and 'interfering' with pipeline equipment could be interpreted to block 'a peaceful protest near the concerned area, which could be construed as going in and tampering with equipment.' Due to this uncertainty, many protesters would likely be deterred from engaging in environmental protests for fear that their actions might result in felony charges. Moreover, beyond the fear of protesters' self-censoring their behavior, the Special Rapporteur expressed concern that the laws themselves could be used to criminalize many environmental protests in violation of international law.

States of course have a legitimate interest in protecting critical infrastructure from sabotage. There is no question that these restrictions, if they are narrowly tailored in their scope, would be permissible under international law. However, even if permissible without context, these restrictions are designed to suppress political dissent and criminalize peaceful protest.

the pipeline, and as the protests grew larger, the [police response turned violent](#). The federal government eventually [halted construction](#), but under President Trump the project was [expedited](#) and the pipeline was completed in April 2017.

Violation of international law

In 2017, Colorado, North Dakota, and Oklahoma all proposed bills as a response to the Standing Rock protests. These bills were [designed to deter](#) similar environmental protests. Of those early legislative efforts, only Oklahoma's bill was enacted into law.¹⁷⁸

Oklahoma's law (HB 1123) created a new criminal offense for trespassing onto property containing 'critical infrastructure.' Under the law, intentionally entering critical infrastructure property is a misdemeanor punishable by up to six months in jail.¹⁷⁹ Entering with the intent to damage the facility is a felony punishable by up to 1 year's imprisonment and fines of at least USD 10,000.¹⁸⁰

In a [2017 communication](#) to the U.S., the Special Rapporteurs on expression and assembly expressed concern over the overbroad nature of Oklahoma's law. Specifically, the Special Rapporteurs worried that the [vague definitions](#) of 'tampering' and 'interfering' with pipeline equipment could be interpreted to block 'a peaceful protest near the concerned area, which could be construed as going in and tampering with equipment.'¹⁸¹ Due to this uncertainty, many protesters would likely be deterred from engaging in environmental protests for fear that their actions might result in felony charges.¹⁸² Moreover, beyond the fear of protesters' self-censoring their behavior, the Special Rapporteur [expressed concern](#) that the laws themselves could be used to criminalize many environmental protests in violation of international law.¹⁸³

States, of course, have a legitimate interest in protecting critical infrastructure from sabotage. There is no question that these restrictions, if they are narrowly tailored in their scope, would be permissible under international law. However, even

Oklahoma HB 1123

Section 1, Oklahoma Statutes § 1792 of Title 21

- A. Any person who shall willfully 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 One Thousand Dollars (USD 1,000.00), or by imprisonment in the county jail for a term of six (6) months, or by both such fine and imprisonment. 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 Ten Thousand Dollars (USD 10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of one (1) year, or by both such fine and imprisonment.**
- 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 ENR. H. B. NO. 1123 Page 2 a fine of One Hundred Thousand Dollars (USD 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.**

if permissible without context, these restrictions are designed to suppress political dissent and criminalize peaceful protest.

It is a near certainty that the reasons proffered by Oklahoma and state governments that have passed similar laws are mere pretext and not the actual reasons motivating the governments to enact the law. The sponsor of Oklahoma's law explicitly told a House of Representatives committee that he [proposed the legislation](#) in response to the Standing Rock protests. Given the language by state officials that much of the motivation for these

laws derived from the protests of the Dakota Access Pipeline, and not from true concerns of sabotage of infrastructure, it is irrefutable that these bills are, at least in part, designed to silence dissent.

States have an obligation to allow protests to take place 'within "sight and sound" of their object and target audiences.'¹⁸⁴ That is, the 'sight and sound' principle aims to ensure that the intended audience hears the demonstration's message. It seems likely that the lawmakers behind these efforts are motivated by the desire to prevent protests at the organizers' preferred location—a location that is directly relevant to environmental protests against the construction of pipelines. Moreover, as stated by the Special Rapporteurs on expression and assembly, these bills appear to be an attempt to [specifically target](#), and therefore chill, the speech of, environmental protesters.

The motivation for these laws derived from the protests at the Dakota Access Pipeline ... it is irrefutable that these bills are, at least in part, designed to silence dissent.

In the years following the Standing Rock protests, 24 states and the federal government proposed 45 bills designed to prevent protests similar to those over the Dakota Access Pipeline.¹⁸⁵ Of these,

Of 45 bills designed to prevent protests similar to those over the Dakota Access Pipeline, 18 have been enacted into law.

18 bills have been enacted into law.¹⁸⁶ The enactment of these laws is an ongoing problem—eight bills of this nature have been introduced and [quickly enacted](#) since the beginning of 2021. Alabama’s law was [signed into law](#) as recently as February 15, 2022.

Each of these new laws follows the same general formula as Oklahoma’s law. Each introduces misdemeanor or felony trespassing charges for anybody who enters or remains in a ‘critical infrastructure’ facility. ‘Critical infrastructure’ is defined differently under different states’ laws, but it always includes pipelines. In addition, each law imposes felony charges for impeding, damaging, or tampering with infrastructure assets. The definition of what constitutes ‘tampering’ varies from state to state, but is generally left vague.

Legislation introduced in seven states and by the federal government would require protest organizers to pay all municipal costs associated with the protest.

Alabama and Florida price out protest

These two laws, as well as other similar laws around the country, would allow state authorities to pass off the costs of law enforcement—as well as cleaning, medical, and other public costs—to the organizers of protests. Moreover, the Florida law would allow police to cap the size of protests.

These provisions are impermissible under international law. States have an obligation to create an enabling environment for protests and must ensure both the safety of participants and ensure that participants have the full ability to exercise their fundamental rights. Part of this positive obligation on the state includes the provision of adequate services such as security, clean-up, and medical services. The UN Human Rights Committee has clarified that ‘[r]equirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21 [of the ICCPR].’

If enforced, these laws will likely price out protests. According to the *Washington Post*, protest organizers might be on the hook for tens—or even hundreds—of thousands of dollars.

Alabama SB 152

§ 1(f)

A municipality may require an application for a permit issued under subsection (e) [governing permits for protests and assemblies] to pay an application fee. The application fee may consist of any or all of the following:

- (1) A security deposit for the actual cost of clean up.**
- (2) A charge to cover the actual cost of the use of law enforcement officers.**
- (3) A charge to cover any other actual administrative cost incurred by the municipality.**

8. Laws requiring protesters to pay public costs and damages associated with the protests

Several states and the federal government have proposed, or enacted, laws which would require protesters or protest organizers to pay public costs associated with the protest or restitution for property damage for which they were not responsible. Forty-one bills of this nature have been introduced. Of these attempts, seven bills—in Alabama, Arkansas, Florida, Iowa, Kansas, and Tennessee—have been enacted into law.¹⁸⁷ Many of these laws go beyond restitution for property damage. Legislation introduced in seven states and by the federal government would require protest organizers to pay all municipal costs associated with the protest, such as the cost of clean-up and the use of LEOs.¹⁸⁸ In addition, several of the laws require protesters, or even bystanders in some cases, to pay restitution for injuries or damages caused at protests in which they took part, even if they were not directly responsible for the damages.¹⁸⁹

Alabama's SB 152 and Florida's HB 1435/SB 1954 laws, as well as other similar laws around the country, would allow state authorities to pass off the costs of law enforcement—as well as cleaning, medical, and other public costs—to the organizers of protests. Moreover, the Florida law would allow police to cap the size of protests.

These provisions are impermissible under international law. States have an obligation to create an enabling environment for protests and must ensure both the safety of participants and ensure that participants have the full ability to exercise their fundamental rights. Part of this positive obligation on the state includes the [provision of adequate services](#) such as security, clean-up, and medical services. The UN Human Rights Committee has clarified that:

- ▶ [r]equirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21 [of the ICCPR].¹⁹⁰

If enforced, these laws will likely price out protests. According to the *Washington Post*, protest organizers might be on the hook for tens, or even hundreds, of thousands of dollars.¹⁹¹

With regards to protest size limits, the UN Human Rights Committee has stated that, '[i]n general, States parties should not limit the number of participants in assemblies.'¹⁹² Exceptions to this rule are only permitted if there is a clear connection to public safety or public health considerations. Without some

Florida HB 1435/SB 1954

§ 316.1891

(1)(b) “Special event” means an unpermitted temporary activity or event organized or promoted via a social media platform ... which is attended by 50 or more persons and substantially increases or disrupts the normal flow of traffic on a roadway, street, or highway.

(6) Notwithstanding s. 633.118, the sheriff or chief administrative officer of a county or municipality may temporarily authorize a law enforcement officer to enforce occupancy limits on private or public property in a special event zone.

(7) The sheriff or chief administrative officer of a county or municipality who designates a special event zone may recover from a promoter or organizer of a special event all relevant costs and fees associated with designating and enforcing the special event zone, including, but not limited to, costs and fees for the provision of supplemental law enforcement, firefighter, emergency medical technician or paramedic, and sanitation services.

A peaceful but heavily policed BLM protest in Atlanta, Georgia on May 31, 2020; several states have passed laws requiring protesters to meet protest-related costs, including for policing (Photo: Raymond Richards; Shutterstock.com)



clear connection to any of the permissible justifications for a restriction on assembly under the ICCPR three-part test, no restriction on crowd size is permissible.¹⁹³

On January 11, 2021, North Dakota introduced legislation that, if signed into law, would potentially cause bystanders to a protest that was deemed a 'riot' under the law, to be liable to pay restitution for damage caused by other people. Under existing North Dakota law, a 'riot' is 'a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.' Under Chapter

12.1-24-04 of the North Dakota Century Code, a person who is present at the scene of a riot, or an immediately impending riot, who disobeys a police officer's orders is guilty of a misdemeanor and faces up to 1 year in jail.

North Dakota HB 1240 would allow the court to make any person guilty of a crime, including those disobeying a public safety order, make restitution for 'any tangible property, real or personal, damaged or destroyed in the course of the riot.' Not only is there no requirement under the law that the person ordered to make restitution is responsible for the property damage, but there is also no requirement for that person to have been a part of the riot or protest.

North Dakota Century Code Chapter 12.1-25

12.1-25-01(2)

"Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

12.1-24-04

A person is guilty of a class A misdemeanor if, during a riot . . . or when one is immediately impending, the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot.

North Dakota HB 1240

Subject to section 12.1-32-08, the court may order a person guilty of an offense under this chapter to make restitution to the owner of any tangible property, real or personal, damaged or destroyed in the course of the riot, including the cost of replacement or the cost of returning the property to the property's condition before the riot.

The Human Rights Committee wrote:

- ▶ If, in exceptional circumstances, organizers are held accountable for damage or injuries for which they were not directly responsible, it must be confined to cases in which evidence shows that the organizers could reasonably have foreseen and prevented the damage or injuries.¹⁹⁴ Thus, it is perfectly permissible under international law to demand that those responsible for property damage pay for the damage they caused. Moreover, in exceptional circumstances, it is likewise permissible for protest organizers to be liable for damages that they could have foreseen and prevented. However, it is never permissible to hold bystanders liable for property damage they had no part in causing.

The [bill failed to pass](#) in the North Dakota House on February 10, 2021.

On May 3, 2021, North Carolina introduced a bill (HB 805) that, if it took effect, would impose felony charges for any person who engaged in a riot if, during the course of the riot, there was property damage in excess of USD 1500. Under the proposed law, there

would be no need for the person facing felony charges to have been personally responsible for any of the damages. A later version of this bill amended the language so that criminal charges were only applicable if an individual was personally responsible for property damage or serious bodily injury. Both the North Carolina House and Senate [approved the legislation](#), but it was vetoed by Governor Roy Cooper on September 10, 2021.

9. Incitement and racketeering charges for organizing protests

In the past several years, states have made efforts to bolster their laws that criminalize inciting riots. These incitement laws are not problematic by their nature. The UN Human Rights Committee confirms that ‘in exceptional circumstances, organizers [can be] held accountable for damage or injuries for which they were not directly responsible.’¹⁹⁵ However, this accountability ‘must be confined to cases in which evidence shows that the organizers could reasonably have foreseen and prevented the damage or injuries.’¹⁹⁶ Thus, it is not necessarily incompatible with international law to hold protest organizers liable for damage or injuries for which they could have reasonably foreseen and prevented.

North Carolina HB 805 (as introduced)

§ 14-288.2

- (a) **A riot is a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.**
- (b) **Any person who willfully engages in a riot is guilty of a Class 1 misdemeanor.**
- (c) **Any person who willfully engages in a riot is guilty of a Class F felony if in the course of and as a result of the riot there is property damage in excess of fifteen hundred dollars (USD 1,500) or serious bodily injury.**

Oklahoma HB 1674

2021 Oklahoma Sess. Law Ch. 106 § 3

If an organization is found to be a conspirator with persons who are found to have committed any of the crimes described in Sections 1311 through 1320.5 and 1320.10 of Title 21 of the Oklahoma Statutes, the conspiring organization shall be punished by a fine that is ten times the amount of said fine authorized by the appropriate provision.

In 28 states, 59 bills have been introduced which criminalize, or increase the penalty for, incitement to riot.¹⁹⁷ Of these, 20 have been enacted into law. Some of these laws are not too problematic, but several create liability that goes far beyond what could reasonably be foreseen or prevented. In fact,

in Oklahoma, a law has been preliminarily enjoined by a federal district court for this very reason.¹⁹⁸ Furthermore, six states have proposed, and two have enacted, legislation that would expand the state's RICO laws to encompass protest-related crimes.¹⁹⁹

Oklahoma law on 'conspirators' violates First Amendment

On 21 April 2021, Oklahoma enacted a law that, among other provisions, imposed large penalties for organizational liability with regard to crimes surrounding protests. An organization found to be a conspirator with persons who are found guilty of certain enumerated offenses—including 'unlawful assembly,' 'riot,' 'incitement to riot,' refusing to aid in the arrest of a rioter when asked by authorities, and refusing to leave a riot when ordered to dispersed—faces fines of 10 times the maximum amount of the fine permitted for each individual offense.

However, on 27 October 2021, the U.S. District Court for the Western District of Oklahoma issued a preliminary injunction preventing this portion of the law from going into effect.

The court found that the plaintiffs were likely to succeed on the merits of their claim that provision of the law that covered organizational liability was impermissibly vague and overbroad and thus violated the First Amendment.



According to the court, the plaintiffs were likely to succeed in their argument that the language of the statute might reach a conspiracy to commit a minor crime—even jaywalking. If one of the individuals involved in that conspiracy then goes on to commit a more serious crime that the other conspirators do not agree to, the other conspirators might nevertheless be liable to significant monetary penalties. Moreover, as noted by the plaintiffs, 'there [are] no geographic, temporal or causal limits in the statute.'

Oklahoma HB 2095

10. “Racketeering activity” means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Oklahoma Statutes, regardless of whether such act is in fact charged or indicted:

hh. relating to unlawful assemblies pursuant to the provisions of Section 1320.3 of Title 21 of the Oklahoma Statutes.

Section 1314 – Unlawful Assembly

Wherever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

On April 21, 2021, Oklahoma enacted a law (HB 1674) that, among other provisions, imposed large penalties for organizational liability with regard to crimes surrounding protests. An organization found to be a conspirator with persons who are found guilty of certain enumerated offenses—including ‘unlawful assembly,’ ‘riot,’ ‘incitement to riot,’ refusing to aid in the arrest of a rioter when asked by authorities, and refusing to leave a riot when ordered to disperse—faces fines of [ten times the maximum amount](#) permitted for each individual offense.

However, on October 27, 2021, the U.S. District Court for the Western District of Oklahoma issued a preliminary injunction preventing this portion of the law from going into effect. The Court found that the plaintiffs were likely to succeed on the merits of their claim that provision of the law that covered organizational liability was impermissibly vague and overbroad and thus violated the First Amendment.²⁰⁰

According to the court, the plaintiffs were likely to succeed in their argument that the language of the statute might reach a conspiracy to commit a minor crime—

even jaywalking. If one of the individuals involved in that conspiracy then goes on to commit a more serious crime that the other conspirators do not agree to, the other conspirators might nevertheless be liable to significant monetary penalties. Moreover, as noted by the plaintiffs, ‘there [are] no geographic, temporal or causal limits in the statute.’²⁰¹

In addition, under Oklahoma law, ‘conspiracy’ is defined as two or more persons conspiring ‘to commit any act injurious to the public health, to public morals or to trade or commerce.’²⁰² As noted by the plaintiffs, this provision leaves unfettered authority to the Court to determine what might be injurious to public health, morals, or commerce.²⁰³

Moreover, the Court noted that the overbreadth of the organizational liability provision likely violates the First Amendment: ‘Plaintiff faces a very real threat of being fined for non-sanctioned activities of those persons with whom it has associated for a legitimate First Amendment action.’²⁰⁴ Thus, ‘[i]n reality, as demonstrated by Plaintiff, the challenged provision will have a chilling effect on Plaintiff’s protected speech activities.’²⁰⁵

As stated by the Supreme Court in *NAACP v. Claiborne Hardware Co.*:

- ▶ Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims.

In this sensitive field, the State may not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.²⁰⁶

As mentioned earlier, six states have proposed, and two have enacted, legislation that would expand the RICO Act to encompass protest-related crimes.²⁰⁷ RICO is a federal law that imposes criminal penalties and creates a civil cause of action for acts performed as part of an ongoing criminal

organization. The [law was passed](#) in 1970 in an effort to combat organized crime.

Oklahoma enacted the [Oklahoma Corrupt Organizations Prevent Act](#), a state version of the RICO law, in November 1988.²⁰⁸ Under this law, any person convicted of violating the Act has committed a felony and faces no less than 10 years' imprisonment.²⁰⁹ On April 28, 2021, Oklahoma added 'unlawful assemblies' to the list of offenses that can be prosecuted under this law. As such, an organization or individual found to have 'attempted to engage in' or 'conspired' with individuals to engage in an 'unlawful assembly' is subject to [10 years' imprisonment](#).²¹⁰

'Unlawful assembly' is only a misdemeanor under Oklahoma law.²¹¹ Thus, three people assembling without lawful authority and in a manner that is 'adapted to disturb the public peace' is enough to constitute unlawful assembly. This definition appears likely to encompass protected speech and assembly, and therefore is overbroad under both international and U.S. law.





5. Improper motivation behind the laws

Given the timing of the introduction of these laws, coupled with statements made by politicians and members of the media, it appears likely that the intended motivation behind the enactment of many of them is to silence members of marginalized communities and quash demonstrations against the continued oppression of marginalized groups.

The attempts to criminalize protests in the U.S. began in earnest following the Standing Rock protests, in which Native demonstrators and environmental activists protested the planned Dakota Access Pipeline. Following the BLM protests in the summer of 2020, the legislative efforts increased dramatically. Statements made by politicians who introduced the legislation, prominent politicians at the national level, and members of the media all served to stigmatize those participating in these protests and helped to encourage harsh

penalties against anybody willing to protest on behalf of marginalized people.

Many of the sponsors of these legislative efforts, and their early supporters, made statements explicitly connecting their attempts to criminalize protests to the Standing Rock and BLM protest movements. For instance, before signing Florida HB 1, which is discussed at length in this report, Florida Governor [Ron DeSantis said](#), ‘We saw really unprecedented disorder and rioting throughout the summer of 2020 and we said that’s not going to happen here in the State of Florida.’²¹² Bob White, the chair of the Republican Liberty Caucus of Florida, [expressed concern](#) about Florida HB 1 because he was worried that ‘[t]here are provisions in the bill that could lead to unintended consequences, allowing liberal prosecutors or other elected officials to shut down peaceful conservative protest gatherings and go after the organizers.’

Similarly, after the McCloskeys were charged with felony use of a firearm, President Donald Trump, Senator Josh Hawley, and others were outraged at the charges, and the couple were asked to speak at the Republican Party National Convention. Missouri Representative Rich Brattin, the sponsor of Missouri HB 66, met with the McCloskeys and expressed his support for their actions.²¹³ Given the language of the bill, which would legalize the behavior of the McCloskeys, it seems likely that the McCloskeys's actions, and how the media portrayed them, inspired Brattin to act.

Several of the bans on protests near pipelines were explicitly inspired by the Standing Rock protests. According to a [joint communication](#) by the Special Rapporteurs on expression and assembly, Oklahoma HB 1123 was 'prompted by the Dakota Access Pipeline protests in North Dakota.' In February 2017, the North Dakota state legislature introduced HB 1203, which would have [provided immunity to drivers](#) who caused injury or death to protesters blocking roadways. State Representative Keith Kempenich, who introduced the bill, said that the Standing Rock protests inspired him to act.

Protesters and police in downtown Miami following the death of George Floyd, May 31, 2020
(Photo Tverdokhlib/Shutterstock.com)



Moreover, statements by prominent politicians over the past few years likely provided encouragement to the state legislatures in their efforts to criminalize protest. President Trump and other political leaders issued threats to protesters in response to property damage caused during the BLM protests.

Finally, media in the U.S. has encouraged attacking protesters and suppressing their ability to peaceful assembly. In January 2017, several months before the Charlottesville attack, right-wing news sources such as Fox News, the Daily Caller, Right Wing News, and the Conservative Post [published a video](#) of cars hitting protesters. Fox News included Mike Raust's, video editor of Daily Caller, description '[Study the technique](#); it may prove useful in the next four years,' when it republished the video on its website.²¹⁴ At the height of these incidents, posts on social media, including Facebook, claimed it was [legal to deliberately drive into crowds](#).

From these incidents and statements, one can see the nationwide forces at work to suppress peaceful protests, particularly those by members of marginalized communities. The media has encouraged violence against protesters; politicians and the media have demonized both the BLM protests and the Standing Rock protests; and politicians have made clear that many of these laws were directly intended to shut down these protests and to intimidate those who would protest for these causes in the future.

It is impossible to view these legislative efforts as anything other than a concerted effort across the U.S. to criminalize protests by members of marginalized communities. These efforts have been encouraged by stigmatization and demonization by prominent politicians and members of the media, as well as direct calls for, and at the very least justification of, violent acts by these same politicians and media members.



6. Conclusion

The efforts by U.S. states to suppress protests appear to be the start of a troubling trend. Many bills of this nature have been introduced over the past three years. Each year, more and more bills are introduced, and more are successfully enacted into law. This trend is pervasive across the whole of the country: 45 states and the federal government have attempted to enact these types of laws. Though most legislative efforts have been unsuccessful thus far, many of the successfully enacted laws are quite pernicious and will likely provide a model for future attempts to prevent protest. Moreover, the legislative efforts inspire and influence similar efforts across the nation. For instance, after Florida HB 1 was enacted, which received notoriety as the first successfully enacted law to provide immunity to drivers who injure or kill protesters, New Jersey, Kentucky, Mississippi, and Virginia all introduced similar legislation.

In fact, New Jersey's bill, introduced on June 24, 2021, was a precise copy of Florida's new law. While this bill was not enacted into law, it is only a matter of time before even more of these attempts are successful.

Though most legislative efforts have been unsuccessful thus far, many of the successfully enacted laws are quite pernicious and will likely provide a model for future attempts.

At this stage, the trends are clear; nearly all of the legislative efforts fall neatly into one of the nine categories:

- 1 Many of the bills contain overly broad and vague definitions of 'riot' and 'unlawful assembly' which allow for the imposition of criminal penalties on peaceful protesters. These broad definitions are also used to impose heightened penalties for behavior that is lightly punished outside the context of a protest.
- 2 Many of the laws grant civil, and in some cases criminal, immunity for private citizens who injure or kill protesters.
- 3 Many of the laws encourage aggressive state action against peaceful protesters, including by creating a cause of action for government officials for property damage and by providing civil immunity for law enforcement officers who kill peaceful protesters or even bystanders and journalists.
- 4 Several of the laws impose disproportionate penalties for demonstrators who block public ways and access to public buildings.
- 5 Under several of the laws, those convicted of, or even just charged with, protest-related crimes would lose access to public benefits and public employment.
- 6 Several of the laws impose disproportionate criminal penalties for people convicted of 'defacing' monuments and memorials.
- 7 Many states have enacted laws which impose penalties for protests that occur near pipelines—laws which likely specifically target environmental protests and Native activists.
- 8 A number of states and the federal government have proposed, or enacted, laws which would require protesters or protest organizers to pay public costs associated with the protest or pay restitution for property damage they were not responsible.
- 9 In a majority of states, legislation has been introduced which criminalizes, or increases the penalty for, incitement to riot. Several of the laws create liability that goes far beyond what is permissible. Furthermore, several states have proposed, and two have enacted, legislation that would expand the state's RICO laws to encompass protest-related crimes.

Each of these categories represents a violation of international law and U.S. constitutional law, as well as an attempt by U.S. authorities to silence criticism, punish dissenters, and maintain their own power. Moreover, despite these widespread and far-reaching legislative efforts, these trends have not received nearly enough attention, given how dangerous they are.

The effort to criminalize protest is a direct response to the BLM and Standing Rock protest movements and has been encouraged by the demonization of protesters and calls for violence by members of the media and prominent politicians.

The right to peacefully assemble is necessary for a democratic state. As explained by the Human Rights Committee:

- ▶ The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.²¹⁵

other rights—a right that is essential to help ensure that all other human rights norms, including economic, social, and cultural rights, are maintained. Moreover, it is often one of the most effective tools available for marginalized individuals and groups to successfully advocate for change. For these reasons, a society that criminalizes peaceful assembly can no longer be accurately called a democratic state.

Like the right to free expression, the right to peaceful assembly is foundational to all

The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.



7. Recommendations

Demonstration against police brutality, Atlanta, Georgia, May 29, 2020 (Photo: Image Alleviation/Shutterstock.com)

To ensure that the right to protest is respected and protected in the U.S., ARTICLE 19 makes the following recommendations:

To the federal government:

- ▶ Facilitate the exercise of the right to protest and ensure protesters can exercise their rights safely.
- ▶ Officially and publicly condemn any disproportionate and excessive use of force, and all attempts to suppress the right to peaceful assembly.
- ▶ Ensure that every political movement enjoys equal rights to protest and express themselves.

To the Justice Department:

- ▶ Ensure that no protest group is treated in a discriminatory manner.
- ▶ Work to protect civil rights and combat white supremacy in all its forms.

- ▶ Ensure that LEO's policing protests or performing other law enforcement duties do not use excessive force and comply fully with the [UN Code of Conduct for Law Enforcement Officials](#) and the [UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#).
- ▶ Ensure that any allegations of excessive use of force by law enforcement agents in the course of protests are promptly, thoroughly and impartially investigated, that the results of these investigations are made public without delay, and that the suspected perpetrators are brought to justice in fair trials.

To state governments:

- ▶ Arrange for security for protests and protect the safety of protesters from both state and non-state actors.
- ▶ Prosecute state and non-state actors who kill or injure protesters illegally.
- ▶ Refrain from introducing or enacting any laws which derogate the right to peaceful assembly.
- ▶ Work on drafting legislation, if enacting laws restricting the right to protest, that is neither vague nor overbroad, and that complies with the U.S. Constitution and Article 21 of the ICCPR.
- ▶ Ensure that even if a protest contains unlawful elements, the protesters are not collectively treated as criminals.

To protesters:

- ▶ Participate in training to ensure that you are aware of the rights you are afforded under state, federal, and international law.
- ▶ Document any human rights violations that occur at protests.
- ▶ Work to protect protesters from marginalized communities if they are threatened.

Annexe

Federal

- U.S. Federal Executive Order 13809 (enacted), issued August 28, 2017, www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18679.pdf.
- U.S. Federal HR 6653 (pending), introduced February 9, 2022, www.congress.gov/bill/117th-congress/house-bill/6653/text.
- U.S. Federal HR 289 (pending), introduced Jan 13, 2021, www.congress.gov/117/bills/hr289/BILLS-117hr289ih.xml.
- U.S. Federal HR 8117 (defeated/expired), introduced August 28, 2020, www.congress.gov/bill/116th-congress/house-bill/8117/text?r=1&s=1.
- U.S. Federal S 4424 (defeated/expired), introduced August 4, 2020, www.congress.gov/bill/116th-congress/senate-bill/4424.
- U.S. Federal S 4266 (defeated/expired), introduced July 22, 2020, www.congress.gov/bill/116th-congress/senate-bill/4266?s=1&r=4.
- U.S. Federal DOT Legislative Proposal (defeated/expired), introduced June 3, 2019, www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/71476/2019-pipeline-safety-reauthorization.pdf.
- U.S. Federal HR 6054 (defeated/expired), introduced June 8, 2018, www.congress.gov/bill/115th-congress/house-bill/6054/text.

Alabama

- Alabama SB 17/HB 21 (enacted), introduced January 11, 2022, signed February 15, 2022, <http://alisondb.legislature.state.al.us/Alison/default.aspx>.
- Alabama SB 152 (enacted), introduced February 21, 2021, signed April 27, 2021, <https://legiscan.com/AL/bill/SB152/2021>.
- Alabama 115 (defeated/expired), introduced January 18, 2022, <https://s3.amazonaws.com/fn-document-service/file-by-sha384/eb6b4c1aa010efccea10c74f4fc2b96f7afde-45f2af25615d037b2a9b63bd2882cf86e7dcfce2d75ff466bc00f1cae66>.
- Alabama HB 2/SB 3 (defeated/expired), introduced June 28, 2021, <http://alisondb.legislature.state.al.us/Alison/SessPrefiledBills.aspx>.
- Alabama S 398 (defeated/expired), introduced April 20, 2021, <https://legiscan.com/AL/bill/SB398/2021>.
- Alabama HB 516 (defeated/expired), introduced March 9, 2021, <http://alisondb.legislature.state.al.us/Alison/default.aspx>.
- Alabama HB 445 (defeated/expired), introduced February 24, 2021, http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.ASPX?BILL=HB445&WIN_TYPE=BillResult.
- Alabama SB 155 (defeated/expired), introduced February 2, 2021, <http://alisondb.legislature.state.al.us/alison/searchableinstruments/2021RS/bills/SB155.htm>.

Alabama HB 133 (defeated/expired), introduced January 26, 2021, http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.aspx?BILL=HB133&WIN_TYPE=BillResult.
Alabama SB 45 (defeated/expired), introduced February 4, 2020, http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.ASPX?BILL=SB45&WIN_TYPE=BillResult.
Alabama HB 94 (defeated/expired), introduced January 9, 2018, <https://legiscan.com/AL/bill/HB94/2018>.

Alaska

Alaska HB 295 (defeated/expired), introduced February 24, 2020, www.akleg.gov/basis/Bill/Detail/31?Root=hb295.

Arizona

Arizona HB 2007 (enacted with improvements), introduced November 21, 2017, signed March 23, 2018, <https://apps.azleg.gov/billStatus/BillOverview/69619>.
Arizona SB 1033 (defeated/expired), introduced December 22, 2021, prefiled for the 2022 session, <https://apps.azleg.gov/BillStatus/BillOverview/76297>.
Arizona SB 1784 (defeated/expired), introduced February 3, 2021, <https://apps.azleg.gov/BillStatus/BillOverview/75929>.
Arizona HB 2485 (defeated/expired), introduced January 22, 2021, <https://apps.azleg.gov/BillStatus/BillOverview/75076>.
Arizona HB 2309 (defeated/expired), introduced January 15, 2021, <https://apps.azleg.gov/BillStatus/BillOverview/74788>.
Arizona SB 1033 (defeated/expired), introduced December 13, 2017, <https://apps.azleg.gov/BillStatus/BillOverview/69665>.
Arizona SB 1142 (defeated/expired), introduced January 19, 2017, www.azleg.gov/legtext/53leg/1R/bills/SB1142P.pdf.

Arkansas

Arkansas HB 1508 (enacted), introduced February 22, 2021, signed 29 April 2021, www.arkleg.state.ar.us/Bills/Detail?id=HB1508.
Arkansas HB 1321 (enacted), introduced January 27, 2021, signed 14 April 2021, www.arkleg.state.ar.us/Bills/Detail?id=hb1321.
Arkansas HB 1578 (enacted), introduced February 17, 2017, signed 6 April 2017, www.arkleg.state.ar.us/Bills/Detail?id=HB1578.
Arkansas HB 1898 (defeated/expired), introduced March 20, 2019, www.arkleg.state.ar.us/Bills/Detail?ddBienniumSession=2019%2F2019R&measureno=HB1898.
Arkansas SB 118 (defeated/expired), introduced January 17, 2019, www.arkleg.state.ar.us/Bills/Detail?ddBienniumSession=2019%2F2019R&measureno=SB118.
Arkansas AB 550 (defeated/expired), introduced March 2, 2017, vetoed April 6, 2017, www.arkleg.state.ar.us/Bills/Document?type=pdf&chamber=SB&source=Bills&bill=550&ddBienniumSession=2017%2F2017R.

California

California AB 1358 (defeated/expired), introduced February 22, 2019, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1358.

Colorado

Colorado SB 18-264 (defeated/expired), introduced April 20, 2018, <http://leg.colorado.gov/bills/sb18-264>.

Colorado SB 17-035 (defeated/expired), introduced January 11, 2017, <https://leg.colorado.gov/bills/sb17-035>.

Connecticut

Connecticut HB 6455 (defeated/expired), introduced February 11, 2021, www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06455&which_year=2021.

Florida

Florida HB 1435/SB 1954 (enacted), introduced January 10, 2022, signed May 26, 2022, www.flsenate.gov/Session/Bill/2022/1435/?Tab=BillHistory.

Florida CS/HB 1571 (enacted), introduced January 11, 2022, signed May 16, 2022, www.flsenate.gov/Committees/BillSummaries/2022/html/2694.

Florida HB 1/SB 484 (enacted), introduced January 6, 2021, signed April 19, 2021, <https://flsenate.gov/Session/Bill/2021/1/BillText/er/PDF>.

Florida HB 11 (pending), introduced July 19, 2021, www.flsenate.gov/Session/Bill/2022/11.

Florida SB 1096/HB 1419 (defeated/expired), introduced February 21, 2017, www.flsenate.gov/Session/Bill/2017/1096/BillText/Filed/PDF.

Georgia

Georgia SB 339 (enacted with improvements), introduced January 19, 2018, signed 8 May 2018, www.legis.ga.gov/legislation/52111.

Georgia SB 171 (pending), introduced February 11, 2021, www.legis.ga.gov/legislation/59676.

Georgia HB 289 (pending), introduced February 3, 2021, www.legis.ga.gov/legislation/59299.

Georgia SB 160 (defeated/expired), introduced April 10, 2017, www.legis.ga.gov/api/legislation/document/20172018/170731.

Georgia SB 1 (defeated/expired), introduced January 10, 2017, www.legis.ga.gov/api/legislation/document/20172018/167322.

Idaho

Idaho SB 1090 (defeated/expired), introduced February 11, 2019, <https://legislature.idaho.gov/sessioninfo/2019/legislation/S1090/>.

Illinois

Illinois SB 3814 (pending), introduced January 21, 2022, www.ilga.gov/legislation/billstatus.asp?DocNum=3814&GAID=16&GA=102&DocTypeID=SB&LegID=138877&SessionID=110.

Illinois HB 3409 (pending), introduced February 22, 2021, www.ilga.gov/legislation/billstatus.asp?DocNum=3409&GAID=16&GA=102&DocTypeID=HB&LegID=132369&SessionID=110.

Illinois HB 2280 (defeated/expired), introduced February 8, 2019, www.ilga.gov/legislation/BillStatus.asp?DocNum=2280&GAID=15&DocTypeID=HB&LegID=118130&SessionID=108&GA=101.

Illinois HB 1633 (defeated/expired), introduced January 31, 2019, www.ilga.gov/legislation/billstatus.asp?DocNum=1633&GAID=15&GA=101&DocTypeID=HB&LegID=116175&SessionID=108.

Illinois HB 2939 (defeated/expired), introduced February 9, 2017, <https://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=HB&DocNum=2939&GAID=14&LegID=104448&SpecSess=&Session=>.

Indiana

Indiana SB 471 (enacted), introduced January 14, 2019, signed May 6, 2019, <http://iga.in.gov/legislative/2019/bills/senate/471>.

Indiana HB 1205 (defeated/expired), introduced January 14, 2021, <http://iga.in.gov/legislative/2021/bills/house/1205#document-70743d0a>.

Indiana SB 198 (defeated/expired), introduced January 12, 2021, <http://iga.in.gov/legislative/2021/bills/senate/198>.

Indiana SB 96 (defeated/expired), introduced January 7, 2021, <http://iga.in.gov/legislative/2021/bills/senate/96>.

Indiana SB 34 (defeated/expired), introduced January 4, 2021, <http://iga.in.gov/legislative/2021/bills/senate/34#digest-heading>.

Indiana SB 78 (defeated/expired), introduced January 3, 2019, <https://iga.in.gov/legislative/2019/bills/senate/78#document-ba224c34>.

Indiana SB 285 (defeated/expired), introduced January 9, 2017, <http://iga.in.gov/legislative/2017/bills/senate/285#>.

Iowa

Iowa SF 342 (enacted), introduced March 1, 2021, signed June 16, 2021, www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF%20342.

Iowa SSB 1140 (defeated/expired), introduced February 2, 2021, www.legis.iowa.gov/legislation/BillBook?ga=89&ba=ssb1140.

Iowa HF 251 (pending), introduced January 27, 2021, www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20251.

Iowa HF 430 (pending), introduced January 26, 2021, www.legis.iowa.gov/legislation/BillBook?ga=89&ba=hf430.

Iowa SB 286 (defeated/expired), introduced March 2, 2017, <https://legiscan.com/IA/bill/SF286/2019>.

Kansas

Kansas SB 172 (enacted), introduced February 8, 2021, signed April 9, 2021, www.kslegislature.org/li/b2021_22/measures/sb172/.

Kansas HB 2610 (defeated/expired), introduced February 2, 2018, www.kslegislature.org/li_2018/b2017_18/measures/hb2612/.

Kentucky

Kentucky HB 44 (enacted), introduced August 29, 2019, signed March 16, 2020, <https://apps.legislature.ky.gov/record/20rs/hb44.html>.

Kentucky HB 396 (defeated/expired), introduced January 28, 2022, <https://apps.legislature.ky.gov/record/22RS/hb396.html>.

Kentucky SB 44 (defeated/expired), introduced January 5, 2022, <https://apps.legislature.ky.gov/record/22rs/sb44.html>.

Kentucky HB 546 (defeated/expired), introduced February 23, 2021, <https://apps.legislature.ky.gov/record/21rs/hb546.html>.

Kentucky SB 211 (defeated/expired), introduced February 9, 2021, <https://apps.legislature.ky.gov/record/21rs/sb211.html>.

Kentucky HB 164 (defeated/expired), introduced January 5, 2021, <https://apps.legislature.ky.gov/record/21rs/hb164.html>.

Kentucky HB 238 (defeated/expired), introduced February 5, 2019, <https://apps.legislature.ky.gov/record/19rs/hb238.html>.

Kentucky HB 53 (defeated/expired), introduced January 2, 2018, <https://apps.legislature.ky.gov/record/18rs/hb53.html>.

Kentucky BR 175 (defeated/expired), introduced August 24, 2017, www.lrc.ky.gov/recorddocuments/bill/18RS/BR175/bill.pdf.

Kentucky HB 488 (defeated/expired), introduced February 2, 2017, <https://apps.legislature.ky.gov/record/17rs/hb488.html>.

Louisiana

Louisiana HB 727 (enacted), introduced March 26, 2018, signed May 30, 2018, www.legis.la.gov/legis/BillInfo.aspx?s=18RS&b=HB727&sbi=y.

Louisiana HB 101 (defeated/expired), introduced February 21, 2022, www.legis.la.gov/legis/Bill-Info.aspx?i=241644.

Louisiana HB 197 (defeated/expired), introduced January 6, 2021, http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtbillnumber=hb197&txtsessionyear=2021.

Louisiana HB 269 (defeated/expired), introduced March 30, 2017, www.legis.la.gov/legis/View-Document.aspx?d=1029581.

Maryland

Maryland HB 645 (defeated/expired), introduced January 22, 2021, <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0645?ys=2021RS>.

Maryland HB 198 (defeated/expired), introduced November 1, 2020, <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0198?ys=2021RS>.

Massachusetts

Massachusetts HB 1586 (pending), introduced January 28, 2021, <https://malegislature.gov/Bills/192/H1586>.

Massachusetts HB 1428 (defeated/expired), introduced January 22, 2019, <https://malegislature.gov/Bills/191/H1428>.

Massachusetts HB 3284 (defeated/expired) introduced January 22, 2019, <https://malegislature.gov/Bills/191/H3284>.

Massachusetts S 1036 (defeated/expired), introduced January 22, 2019, <https://malegislature.gov/Bills/191/S1036>.

Massachusetts HB 1588 (defeated/expired), introduced January 17, 2019, <https://malegislature.gov/Bills/191/HD2369>.

Massachusetts HB 916 (defeated/expired), introduced June 30, 2017, <https://malegislature.gov/Bills/190/H916>.

Michigan

Michigan HB 6269 (defeated/expired), introduced September 29, 2020, <http://legislature.mi.gov/doc.aspx?2020-HB-6269>.

Michigan HB 4436 (defeated/expired), introduced April 9, 2019, <http://legislature.mi.gov/doc.aspx?2019-HB-4436>.

Michigan SB 350 (defeated/expired), introduced May 2, 2017, <http://legislature.mi.gov/doc.aspx?2017-SB-0350>.

Minnesota

Minnesota HF 1967/SF 1285 (defeated/expired), introduced March 8, 2021, www.revisor.mn.gov/bills/bill.php?f=HF1967&b=house&y=2021&ssn=0.

Minnesota HB 1558 (defeated/expired), introduced February 25, 2021, www.revisor.mn.gov/bills/bill.php?b=House&f=HF1558&ssn=0&y=2021.

Minnesota SF 355 (defeated/expired), introduced January 28, 2021, www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF0355&ssn=0&y=2021.

Minnesota HF 466/SF 2381 (defeated/expired), introduced January 28, 2021, www.revisor.mn.gov/bills/bill.php?b=House&f=HF0466&ssn=0&y=2021.

Minnesota HF 254/SF 386 (defeated/expired), introduced January 21, 2021, www.revisor.mn.gov/bills/bill.php?b=House&f=HF0254&ssn=0&y=2021.

Minnesota HF 129/SF 1378 (defeated/expired), introduced January 14, 2021, www.revisor.mn.gov/bills/bill.php?b=House&f=HF0129&ssn=0&y=2021.

Minnesota HF 3668 (defeated/expired), introduced February 24, 2020, www.revisor.mn.gov/bills/bill.php?b=House&f=HF3668&ssn=0&y=2019.

Minnesota HF 2966 (defeated/expired), introduced January 31, 2020, www.revisor.mn.gov/bills/bill.php?b=house&f=HF2966&ssn=0&y=2020.

Minnesota HF 2441/SF 2011 (defeated/expired), introduced March 4, 2019, www.revisor.mn.gov/bills/bill.php?f=SF2011&y=2019&ssn=0&b=senate.

Minnesota HF 1383 (defeated/expired), introduced February 18, 2019, www.revisor.mn.gov/bills/bill.php?f=HF1383&b=house&y=2019&ssn=0.

Minnesota HF 390 (defeated/expired), introduced January 29, 2019, www.revisor.mn.gov/bills/bill.php?b=House&f=HF0390&ssn=0&y=2019.

Minnesota SF 3463 (defeated/expired), introduced March 12, 2018, www.revisor.mn.gov/bills/bill.php?f=SF3463&y=2018&ssn=0&b=senate.

Minnesota HF 1066/SF 918 (defeated/expired), introduced February 9, 2017, www.revisor.mn.gov/bills/text.php?number=HF1066&version=0&session=ls90&session_year=2017&session_number=0.

Minnesota HF 896/SF 803 (defeated/expired), introduced February 9, 2017, vetoed May 15, 2017, www.revisor.mn.gov/bills/text.php?number=HF896&version=1&session=ls90&session_year=2017&session_number=0.

Minnesota HF 322/SF 679 (defeated/expired), introduced 2 February 2017, www.revisor.mn.gov/bills/text.php?number=HF322&version=0&session=ls90&session_year=2017&session_number=0.

Minnesota HF 390 (defeated/expired), introduced January 23, 2017, vetoed May 19, 2018, www.revisor.mn.gov/bills/text.php?number=HF390&version=0&session=ls90&session_year=2017&session_number=0.

Mississippi

Mississippi HB 1243 (enacted), introduced February 19, 2020, signed June 25, 2020, <http://bill-status.ls.state.ms.us/2020/pdf/history/HB/HB1243.xml>.

Mississippi HB 1106 (defeated/expired), introduced January 17, 2022, <http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB1106.xml>.

Mississippi HB 24/HB 613 (defeated/expired), introduced January 4, 2022, <http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB0024.xml>.

Mississippi HB 763 (defeated/expired), introduced January 18, 2021, <http://billstatus.ls.state.ms.us/2021/pdf/history/HB/HB0763.xml>.

Mississippi SB 2374 (defeated/expired), introduced January 15, 2021, <http://billstatus.ls.state.ms.us/2021/pdf/history/SB/SB2374.xml>.

Mississippi SB 2283 (defeated/expired), introduced January 12, 2021, <http://billstatus.ls.state.ms.us/2021/pdf/history/SB/SB2283.xml>.

Mississippi HB 83 (defeated/expired), introduced January 7, 2021, <http://billstatus.ls.state.ms.us/2021/pdf/history/HB/HB0083.xml>.

Mississippi SB 2474 (defeated/expired), introduced January 21, 2019, <http://billstatus.ls.state.ms.us/2019/pdf/history/SB/SB2474.xml>.

Mississippi SB 2754 (defeated/expired), introduced January 21, 2019, <http://billstatus.ls.state.ms.us/2019/pdf/history/SB/SB2754.xml>.

Mississippi SB 2730 (defeated/expired), introduced January 16, 2017, <http://billstatus.ls.state.ms.us/documents/2017/html/SB/2700-2799/SB2730IN.htm>.

Missouri

Missouri SB 26 (enacted with improvements), introduced December 1, 2020, www.senate.mo.gov/21info/BTS_Web/Bill.aspx?SessionType=R&BillID=54105537.

Missouri HB 355 (enacted), introduced April 18, 2019, signed July 11, 2019, <https://house.mo.gov/Bill.aspx?bill=HB355&year=2019&code=R>.

Missouri HB 1413 (enacted), introduced January 3, 2018, signed June 1, 2018, <https://house.mo.gov/billtracking/bills181/hlrbillspdf/4637S.14T.pdf>.

Missouri HB 1914 (defeated/expired), introduced December 9, 2021, prefiled for the 2022 session, <https://house.mo.gov/Bill.aspx?bill=HB1914&year=2022&code=R>.

Missouri HB 1441 (defeated/expired), introduced March 1, 2021, <https://house.mo.gov/Bill.aspx?bill=HB1441&year=2021&code=R>.

Missouri SB 66 (defeated/expired), introduced December 1, 2020, www.senate.mo.gov/21info/pdf-bill/intro/SB66.pdf.

Missouri HB 56 (defeated/expired), introduced December 1, 2020, <https://house.mo.gov/bill.aspx?bill=HB56&year=2021&code=R>.

Missouri SB 9 (defeated/expired), introduced July 27, 2020, www.senate.mo.gov/20info/BTS_Web/Bill.aspx?SessionType=E1&BillID=49969104.

Missouri SB 293 (defeated/expired), introduced January 24, 2019, www.senate.mo.gov/19info/BTS_Web/Bill.aspx?SessionType=R&BillID=2044458.

Missouri HB 442 (defeated/expired), introduced January 9, 2019, <https://house.mo.gov/bill.aspx?bill=HB442&year=2019&code=R>.

Missouri HB 288 (defeated/expired), introduced January 4, 2019, <https://house.mo.gov/bill.aspx?bill=HB288&year=2019&code=R>.

Missouri HB 2423 (defeated/expired), introduced February 8, 2018, <https://house.mo.gov/bill.aspx?bill=HB2423&year=2018&code=R>.

Missouri HB 2145 (defeated/expired), introduced January 17, 2018, www.house.mo.gov/bill-tracking/bills181/hlrbillspdf/5933H.01I.pdf.

Missouri SB 813 (defeated/expired), introduced January 3, 2018, www.senate.mo.gov/18info/BTS_Web/Bill.aspx?SessionType=R&BillID=70011050.

Missouri HB 1259 (defeated/expired), introduced December 1, 2017, <https://house.mo.gov/Bill-Content.aspx?bill=HB1259&year=2018&code=R&style=new>.

Missouri HB 179 (defeated/expired), introduced January 4, 2017, www.house.mo.gov/billtracking/bills171/hlrbillspdf/0794H.011.pdf.

Montana

Montana HB 481 (enacted), introduced February 18, 2021, signed May 14, 2021, <https://leg.mt.gov/bills/2021/billpdf/HB0481.pdf>.

Montana HB 571 (defeated/expired), introduced February 27, 2017, <https://leg.mt.gov/bills/2017/billhtml/HB0571.htm>.

Nebraska

Nebraska LB 111 (defeated/expired), introduced January 7, 2021, https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=43461.

Nevada

Nevada AB 168 (defeated/expired), introduced February 23, 2021, www.leg.state.nv.us/App/NE-LIS/REL/81st2021/Bill/7517/Overview.

New Hampshire

New Hampshire HB 197 (pending), introduced January 6, 2021, http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtbillnumber=hb197&txtsessionyear=2021.

New Jersey

New Jersey S 1206 (pending), introduced February 3, 2022, www.njleg.state.nj.us/bill-search/2022/S1206.

New Jersey A 456/S 84 (pending), introduced January 11, 2022, www.njleg.state.nj.us/bill-search/2022/A456.

New Jersey S 3992 (defeated/expired), introduced June 24, 2021, <https://legiscan.com/NJ/bill/S3992/2020>.

New Jersey S 3261 (defeated/expired), introduced December 10, 2020, <https://legiscan.com/NJ/bill/S3261/2020>.

New Jersey A 4991 (defeated/expired), introduced November 16, 2020, www.njleg.state.nj.us/2020/Bills/A5000/4991_I1.HTM.

New Jersey A 3760 (defeated/expired), introduced March 6, 2020, www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A3760.

New Jersey A 5731 (defeated/expired), introduced August 23, 2019, www.njleg.state.nj.us/2018/Bills/A9999/5731_I1.PDF.

New Jersey AB 4777 (defeated/expired), introduced May 11, 2017, www.njleg.state.nj.us/2016/Bills/A5000/4777_I1.HTM.

New York

New York A 8342 (pending), introduced October 20, 2021, <https://legiscan.com/NY/bill/A08342/2021>.

New York A 5121/S 4989 (pending), introduced February 11, 2021, https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A05121&term=&Summary=Y&Actions=Y&Text=Y.
New York A 11069 (defeated/expired), introduced October 7, 2020, https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A11069&term=2019&Summary=Y&Actions=Y&Text=Y.
New York A 10603 (defeated/expired), introduced June 5, 2020, https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A10603&term=2019&Summary=Y&Actions=Y&Text=Y.

North Carolina

North Carolina SB 300 (enacted with improvements), introduced March 15, 2021, enacted 12 May 2021, www.ncleg.gov/BillLookUp/2021/s300.
North Carolina HB 805 (defeated/expired), introduced May 3, 2021, www.ncleg.gov/Bill-LookUp/2021/h805.
North Carolina SB 335 (defeated/expired), introduced March 23, 2021, www.ncleg.gov/Bill-LookUp/2021/S335.
North Carolina HB 333 (defeated/expired), introduced March 17, 2021, www.ncleg.gov/Bill-LookUp/2021/H333.
North Carolina HB 321 (defeated/expired), introduced March 10, 2021, www.ncleg.gov/Bill-LookUp/2021/h321.
North Carolina SB 238 (defeated/expired), introduced March 10, 2021, www.ncleg.gov/Bill-LookUp/2021/SB238.
North Carolina HB 966 (defeated/expired), introduced April 26, 2019, www.ncleg.gov/documents/sites/Committees/HouseAppropriations/2019%20Session/2019-05-01/003_House_BudgetBill_H966v2.pdf.
North Carolina HB 330 (defeated/expired), introduced March 13, 2017, www.ncleg.net/Sessions/2017/Bills/House/PDF/H330v2.pdf.
North Carolina SB 229 (defeated/expired), introduced March 9, 2017, www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S229v0.pdf.
North Carolina HB 249 (defeated/expired), introduced March 2, 2017, www.ncleg.net/Sessions/2017/Bills/House/PDF/H249v1.pdf.

North Dakota

North Dakota SB 2044 (enacted), introduced January 3, 2019, signed April 10, 2019, www.legis.nd.gov/assembly/66-2019/bill-index/bi2044.html.
North Dakota HB 1426 (enacted), introduced January 16, 2017, signed February 23, 2017, www.legis.nd.gov/assembly/65-2017/documents/17-8158-02000.pdf.
North Dakota HB 1293 (enacted), introduced January 12, 2017, signed February 23, 2017, www.legis.nd.gov/assembly/65-2017/documents/17-0650-04000.pdf.
North Dakota HB 1304 (enacted), introduced January 12, 2017, signed February 23, 2017, www.legis.nd.gov/assembly/65-2017/documents/17-0311-04000.pdf.
North Dakota HB 1240 (defeated/expired), introduced January 11, 2021, www.legis.nd.gov/assembly/67-2021/bill-actions/ba1240.html.
North Dakota Executive Order 2017-01 (defeated/expired), issued February 15, 2017, www.governor.nd.gov/sites/governor/files/documents/Executive%20Order%202017-01.pdf.
North Dakota HB 1203 (defeated/expired), introduced January 16, 2017, www.legis.nd.gov/assembly/65-2017/documents/17-0351-01000.pdf.
North Dakota HB 1193 (defeated/expired), introduced January 9, 2017, www.legis.nd.gov/assembly/65-2017/bill-actions/ba1193.html.

Ohio

- Ohio SB 33 (enacted), introduced February 12, 2019, signed January 11, 2021, www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-33.
- Ohio HB 109 (pending), introduced February 16, 2021, www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-109.
- Ohio HB 22 (pending), introduced February 3, 2021, www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-22.
- Ohio SB 41 (pending), introduced February 2, 2021, www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-41.
- Ohio SB 16 (pending), introduced January 26, 2021, www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-16.
- Ohio HB 784 (defeated/expired), introduced November 9, 2020, www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-HB-784.
- Ohio HB 362 (defeated/expired), introduced October 8, 2019, www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-362.
- Ohio SB 250 (defeated/expired), introduced January 24, 2018, www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-250.

Oklahoma

- Oklahoma HB 1674 (enacted), introduced February 2, 2021, signed April 21, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb1674&Session=2100.
- Oklahoma HB 2095 (enacted), introduced February 1, 2021, signed April 28, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb2095&Session=2200.
- Oklahoma HB 2128 (enacted), introduced February 6, 2018, signed May 15, 2017, http://web-server1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2128%20ENR.PDF.
- Oklahoma HB 1123 (enacted), introduced February 6, 2017, signed May 3, 2017, <https://legiscan.com/OK/text/HB1123/2017>.
- Oklahoma SB 560 (defeated/expired), introduced February 2, 2021, <https://legiscan.com/OK/bill/SB560/2021>.
- Oklahoma SB 15 (defeated/expired), introduced February 1, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=sb15&Session=2200.
- Oklahoma HB 1561 (defeated/expired), introduced February 1, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb1561&Session=2100.
- Oklahoma HB 1565 (defeated/expired), introduced February 1, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb1565&Session=2100.
- Oklahoma HB 1578 (defeated/expired), introduced February 1, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb1578&Session=2100.
- Oklahoma HB 1822 (defeated/expired), introduced February 1, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb1822&Session=2100.
- Oklahoma HB 2094 (defeated/expired), introduced January 21, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb2094&Session=2100.
- Oklahoma HB 2096 (defeated/expired), introduced January 21, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb2096&Session=2100.
- Oklahoma HB 2215 (defeated/expired), introduced January 21, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb2215&Session=2100.
- Oklahoma HB 2464 (defeated/expired), introduced January 21, 2021, www.oklegislature.gov/BillInfo.aspx?Bill=hb2464&Session=2100.

Oklahoma SB 806 (defeated/expired), introduced January 21, 2021, www.oklegislature.gov/Bill-Info.aspx?Bill=sb806&Session=2100.

Oklahoma SB 592 (defeated/expired), introduced January 18, 2019, www.oklegislature.gov/Bill-Info.aspx?Bill=SB592&Session=1900.

Oregon

Oregon HB 3329 (defeated/expired), introduced March 2, 2021, <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3329>.

Oregon HB 4126 (defeated/expired), introduced January 28, 2020, <https://olis.oregonlegislature.gov/liz/2020R1/Measures/Overview/HB4126>.

Oregon SB 540 (defeated/expired), introduced January 9, 2017, <https://gov.oregonlive.com/bill/2017/SB540/>.

Pennsylvania

Pennsylvania SB 887 (defeated/expired), introduced October 7, 2019, www.legis.state.pa.us/cf-docs/billInfo/BillInfo.cfm?year=2019&sind=0&body=S&type=B&bn=887.

Pennsylvania SB 323 (defeated/expired), introduced February 22, 2019, www.legis.state.pa.us/cfdocs/billinfo/BillInfo.cfm?year=2019&sind=0&body=S&type=B&bn=323.

Pennsylvania SB 754 (defeated/expired), introduced August 16, 2017, www.legis.state.pa.us/CF-DOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=S&billTyp=B&billNbr=0754&pn=1105.

Pennsylvania SB 652 (defeated/expired), introduced April 25, 2017, www.legis.state.pa.us/cf-docs/billInfo/BillInfo.cfm?year=2017&sind=0&body=S&type=B&bn=652.

Rhode Island

Rhode Island SB 404 (defeated/expired), introduced February 25, 2021, <https://legiscan.com/RI/bill/S0404/2021>.

Rhode Island HB 5001 (defeated/expired), introduced January 8, 2021, <https://legiscan.com/RI/bill/H5001/2021>.

Rhode Island HB 7543 (defeated/expired), introduced February 12, 2020, <https://legiscan.com/RI/bill/H7543/2020>.

Rhode Island HB 5690 (defeated/expired), introduced March 1, 2017, <http://webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5690.pdf>.

South Carolina

South Carolina HB 3491 (defeated/expired), introduced December 16, 2020, www.scstatehouse.gov/billsearch.php?billnumbers=3491&session=124&summary=B.

South Carolina HB 5045 (defeated/expired), introduced January 29, 2020, www.scstatehouse.gov/sess123_2019-2020/prever/5045_20200129.htm.

South Carolina SB 33 (defeated/expired), introduced January 8, 2019, www.scstatehouse.gov/billsearch.php?billnumbers=s33.

South Dakota

South Dakota SB 151 (enacted), introduced February 4, 2020, signed March 18, 2020, <https://sdlegislature.gov/Session/Bill/12001>.

South Dakota HB 1117 (enacted), introduced January 29, 2020, signed March 23, 2020, <https://sdlegislature.gov/Session/Bills/43>.

South Dakota SB 189 (enacted), introduced March 4, 2019, signed March 27, 2019, <https://sdlegislature.gov/Session/Bill/10176>.

South Dakota SB 176 (enacted), introduced March 3, 2017, signed March 14, 2017, <https://mylrc.sdlegislature.gov/api/Documents/69293.pdf>.

South Dakota HB 1288 (defeated/expired), introduced February 6, 2020, <https://sdlegislature.gov/Session/Bill/11519>.

Tennessee

Tennessee SB 451/HB 881 (enacted), introduced February 8, 2021, signed May 13, 2021, <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB0451&GA=112>.

Tennessee HB 8005/SB 8005 (enacted), introduced August 7, 2020, signed August 20, 2020, <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB8005&GA=111>.

Tennessee SB 264 (enacted), introduced January 29, 2019, signed May 10, 2019, <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0264&GA=111>.

Tennessee SB 0902 (enacted), introduced February 9, 2017, signed April 12, 2017, <https://legiscan.com/TN/text/SB0902/2017>.

Tennessee HB 513/SB 843 (defeated/expired), introduced February 4, 2021, <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0513&GA=112>.

Tennessee SB 1750 (defeated/expired), introduced January 21, 2020, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1750>.

Tennessee HB 0668/SB 0944 (defeated/expired), introduced February 9, 2017, www.capitol.tn.gov/Bills/110/Bill/HB0668.pdf.

Texas

Texas HB 9 (enacted), introduced 25 February 2021, signed June 1, 2021, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB9>.

Texas HB 3557 (enacted), introduced 6 March 2019, signed June 14, 2019, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB3557>.

Texas HB 3599 (defeated/expired), introduced March 10, 2021, <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=87R&Bill=HB3599>.

Texas HB 2747 (defeated/expired), introduced March 3, 2021, <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=87R&Bill=HB2747>.

Texas SB 912/HB 3652 (defeated/expired), introduced March 2, 2021, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=SB912>.

Texas HB 2461 (defeated/expired), introduced March 1, 2021, <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=87R&Bill=HB2461>.

Texas HB 2150 (defeated/expired), introduced February 23, 2021, <https://legiscan.com/TX/bill/HB2150/2021>.

Texas SB 2229 (defeated/expired), introduced March 8, 2019, <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=86R&Bill=SB2229>.

Texas HB 2100 (defeated/expired), introduced March 8, 2019, <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=86R&Bill=HB2100>.

Texas HB 250 (defeated/expired), introduced July 20, 2017, <https://capitol.texas.gov/tlodocs/851/billtext/pdf/HB00250I.pdf#navpanes=0>.

Utah

Utah SB 173 (enacted), introduced February 24, 2020, signed March 30, 2020, <https://le.utah.gov/~2020/bills/static/SB0173.html>.

Utah SB 138 (defeated/expired), introduced January 28, 2021, <https://le.utah.gov/~2021/bills/static/SB0138.html>.

Virginia

Virginia SB 531 (defeated/expired), introduced January 12, 2022, <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+SB531>.

Virginia SB 1308 (defeated/expired), introduced January 12, 2021, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb1308&submit=GO>.

Virginia SB 5079 (defeated/expired), introduced August 17, 2020, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb1308&submit=GO>.

Virginia SB 5056 (defeated/expired), introduced August 17, 2020, <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5056S1>.

Virginia SB 5074 (defeated/expired), introduced August 17, 2020, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5074&submit=GO>.

Virginia HB 1601 (defeated/expired), introduced January 19, 2018, <https://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+HB1601>.

Virginia Executive Order No. 67 (defeated/expired), introduced August 18, 2017, effective until 18 November 2017, <http://governor.virginia.gov/media/9430/eo-67-executive-order-temporarily-suspending-permit-requiring-uses-of-the-lee-monument-in-richmond-virginia-and-directing-review-of-permitting-regulations.pdf>.

Virginia HB 1791 (defeated/expired), introduced January 9, 2017, vetoed April 28, 2017, <https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB1791ER+pdf&171+ful+HB1791ER+pdf>.

Virginia SB 1055 (defeated/expired), introduced January 6, 2017, <https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+SB1055&171+ful+SB1055>.

Washington

Washington SB 5456 (defeated/expired), introduced February 15, 2021, <https://app.leg.wa.gov/billsummary?BillNumber=5456&Year=2021&Initiative=false>.

Washington SB 5310 (defeated/expired), introduced January 20, 2021, <https://app.leg.wa.gov/billsummary?BillNumber=5310&Year=2021&Initiative=false>.

Washington SB 5941 (defeated/expired), introduced May 22, 2017, reintroduced January 8, 2018, <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5941.pdf>.

Washington SB 5009 (defeated/expired), introduced January 9, 2017, reintroduced January 8, 2018, <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/5009.pdf>.

West Virginia

West Virginia HB 4615 (enacted), introduced January 30, 2020, signed March 25, 2020, www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=4615&year=2020&sessiontype=RS.

West Virginia HB 4618 (enacted), introduced February 13, 2018, signed March 10, 2018, www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=4618&year=2018&sessiontype=RS.

Wisconsin

Wisconsin AB 426 (enacted), introduced September 12, 2019, signed November 21, 2019, <https://docs.legis.wisconsin.gov/2019/proposals/reg/asm/bill/ab426>.

Wisconsin SB 296/AB 279 (defeated/expired), introduced April 8, 2021, <https://docs.legis.wisconsin.gov/2021/proposals/sb296>.

Wisconsin AB 617 (defeated/expired), introduced November 19, 2019, <https://docs.legis.wisconsin.gov/2019/proposals/ab617>.

Wisconsin AB 444 (defeated/expired), introduced September 13, 2019, <https://docs.legis.wisconsin.gov/2019/proposals/ab444>.

Wisconsin AB 395/SB 303 (defeated/expired), introduced June 19, 2017, <https://docs.legis.wisconsin.gov/2017/proposals/reg/asm/bill/ab395>.

Wisconsin AB 396/SB 304 (defeated/expired), introduced June 19, 2017, <https://docs.legis.wisconsin.gov/2017/proposals/reg/asm/bill/ab396>.

Wisconsin AB 397/SB 305 (defeated/expired), introduced June 19, 2017, <https://docs.legis.wisconsin.gov/2017/proposals/reg/asm/bill/ab397>.

Wisconsin AB 299 (defeated/expired), introduced May 5, 2017, <https://docs.legis.wisconsin.gov/2017/proposals/reg/asm/bill/ab299>.

Wyoming

Wyoming HB 10 (defeated/expired), introduced December 14, 2018, www.wyoleg.gov/Legislation/2019/HB0010.

Wyoming HB 0137 (defeated/expired), introduced February 12, 2018, <https://wyoleg.gov/2018/Introduced/HB0137.pdf>.

Wyoming SF 0074 (defeated/expired), introduced February 7 2018, vetoed March 14, 2018, <https://wyoleg.gov/2018/Engross/SF0074.pdf>.

Endnotes

- 1 ICNL, 'US Protest Law Tracker,' last updated 2 June 2022, www.icnl.org/usprotestlawtracker. It would not have been possible to put this report together without the work undertaken by the International Center for Not-for-Profit Law (ICNL), which has put together a comprehensive and constantly updated database of the legislative attempts by state governments to criminalize protests. This report has merely built on the ICNL's work to help provide a context to these efforts and an analysis of these bills under international law.
- 2 UN Human Rights Council Resolution 24/5, 'The Rights to freedom of peaceful assembly and of association,' A/HRC/RES/24/5, 8 October 2013.
- 3 Human Rights Committee General Comment No. 37, UN Doc. CCPR/C/GC/37, para. 11, (23 July 2020) [hereinafter General Comment No. 37].
- 4 General Comment No. 37 at para. 16.
- 5 General Comment No. 37 at para. 17.
- 6 General Comment No. 37 at para. 15.
- 7 General Comment No. 37 at para. 15.
- 8 General Comment No. 37 at para. 7.
- 9 Alexandre Charles Kiss, 'Permissible Limitations on Rights,' in *The International Bill of Rights: The Covenant on Civil and Political Rights* 290, 304 (Louis Henkin ed., 1981).
- 10 UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, para. 25 (12 September 2011) [hereinafter General Comment No. 34].
- 11 [International Covenant on Civil and Political Rights](#), Article 19(2).
- 12 General Comment No. 37 at para. 36.
- 13 General Comment No. 37 at para. 43.
- 14 General Comment No. 37 at para. 44.
- 15 Manfred Nowak, UN Covenant of Civil and Political Rights: CCPR Commentary 464–66 (2005).
- 16 General Comment No. 37 at paras. 74, 76.
- 17 General Comment No. 37 at para. 57.
- 18 General Comment No. 37 at paras. 57–58.
- 19 General Comment No. 37 at paras. 76, 79.
- 20 General Comment No. 37 at para. 48.
- 21 The American Convention on Human Rights, on the other hand, contains provisions that explicitly take into account ulterior motives. See Organization of American States, [American Convention on Human Rights](#), 'Pact of San Jose', Costa Rica, 22 November 1969, Article 30.
- 22 General Comment No. 34 at para. 22.
- 23 UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1984/4, 28 September 1984, at §I(A) (6).
- 24 *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940).
- 25 *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 776; *Thornhill v. Alabama*, 310 U.S. 88, 101–102 (1940); *Mills v. Alabama*, 384 U.S. 214, 218 (1966); *Grosjean v. American Press Co.*, 297 U.S. 233, 248–249 (1936); *Journal of the Continental Congress*, 1904 ed., vol. I, pp. 104, 108. (The Continental Congress said that the importance of freedom of the press is due to 'its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are ashamed or intimidated, into more honorable and just modes of conducting affairs.').
- 26 *Cooley's Constitutional Limitations*, 8th ed., p. 886 (cited in *Grosjean v. American Press Co.*, 297 U.S. 233, 249–250).
- 27 *Citizens United v. FEC*, 558 U.S. 310, 372 (2010) (citing *McConnell v. FEC*, 540 U.S. 93, 341).
- 28 *Bates v. City of Little Rock*, 361 U.S. 516, 524 (1960); *NAACP v. Alabama*, 357 U.S. 449. See also *Jacobson v. Massachusetts*, 197 U.S. 11; *Schneider v. State*, 308 U.S. 147; *Cox v. New Hampshire*, 312 U.S. 569, 574; *Murdock v. Pennsylvania*, 319 U.S. 105; *Prince v. Massachusetts*, 321 U.S. 158; *Kovacs v. Cooper*, 336 U.S. 77.
- 29 *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 786; *Elrod v. Burns*, 427 U.S. 347, 362 (1976)

30 First Nat'l Bank v. Bellotti, 435 U.S. 765, 786; Buckley v. Valeo, 424 U.S., at 25; see NAACP v. Button, 371 U.S. 415, 438; Shelton v. Tucker, 364 U.S. 479, 488 (1960).

31 Grosjean v. American Press Co., 297 U.S. 233; Murdock v. Pennsylvania, 319 U.S. 105; American Communications Assn. v. Douds, 339 U.S. 382, 402; NAACP v. Alabama 357 U.S. 449; Smith v. California, 361 U.S. 147.

32 De Jonge v. Oregon, 299 U.S. 353 (1937).

33 Virginia v. Black, 538 U.S. 343, 344 (2003).

34 Brandenburg v. Ohio, 395 U.S. 444 (1969).

35 Ward v. Rock Against Racism, 491 U.S. 781 (1989).

36 NAACP v. Button, 371 U.S. 415, 432–33 (1963).

37 Thornhill v. Alabama, 310 U.S. 88, 102 (1940).

38 U.S. Federal S 4266; Alabama SB 115; Alabama HB 2/SB 3; Alabama S 398; Alabama HB 445; Alabama HB 133; Arizona SB 1784; Arizona HB 2485; Arizona HB 2309; Arizona SB 1142; Arkansas HB 1508; Arkansas HB 1578; Arkansas HB 1898; Florida HB 1/SB 484; Georgia HB 289; Georgia SB 1; Indiana HB 1205; Indiana SB 198; Indiana SB 34; Indiana SB 96; Iowa SF 342; Iowa HF 251; Iowa HF 430; Kentucky SB 44; Kentucky HB 546; Kentucky SB 211; Kentucky HB 164; Maryland HB 198; Michigan HB 6269; Mississippi HB 24/HB 613; Mississippi SB 2374; Mississippi HB 83; Missouri SB 26; Missouri HB 1441; Missouri SB 66; Missouri HB 56; Missouri HB 288; Missouri HB 2145; Missouri HB 1259; Nebraska LB 111; Nevada AB 168; New Hampshire HB 197; New Jersey S 1206; New Jersey A 456/S 84; New Jersey S 3992; New Jersey S 3261; New Jersey A 4991; New Jersey A 3760; New Jersey AB 4777; New York A 5121; New York A 11069; New York A 10603; North Carolina HB 805; North Carolina SB 300; North Carolina HB 249; North Dakota HB 1426; North Dakota HB 1240; Ohio HB 109; Ohio HB 22; Ohio SB 16; Ohio HB 784; Oklahoma HB 1674; Oklahoma HB 1578; Oklahoma HB 2095; Oklahoma HB 2096; Oklahoma HB 2215; Oklahoma HB 2464; Oklahoma SB 806; Oklahoma SB 15; Oregon HB 3329; Oregon HB 4126; South Carolina HB 3491; South Dakota HB 1117; South Dakota SB 189; South Dakota HB 1288; Tennessee SB 451/HB 881; Tennessee HB 8005/SB 8005; Texas HB 3599; Texas HB 2747; Texas SB 912/HB 3652; Texas HB 2461; Utah SB 138; Utah SB 173; Virginia SB 5056; Virginia SB 5074; Virginia HB 1601; Virginia HB 1791; Virginia SB 1055; Washington SB 5456; Washington SB 5310; West Virginia HB 4618; Wisconsin SB 296/AB 279; Wisconsin AB 395/SB 303; Wisconsin AB 396/SB 304; Wisconsin AB 397/SB 305.

39 Arkansas HB 1508; Arkansas HB 1578; Florida HB 1/SB 484; Iowa SF 342; Missouri SB 26; North Dakota HB 1426; Oklahoma HB 1674; South Dakota HB 1117; South Dakota SB 189; Tennessee SB 451/HB 881; Tennessee HB 8005/SB 8005; Utah SB 173; West Virginia HB 4618.

40 [International Covenant on Civil and Political Rights](#), Article 21, at para. 17.

41 [International Covenant on Civil and Political Rights](#), Article 21, at para. 36.

42 The Dream Defenders v. DeSantis et al.

43 General Comment No. 34 at para. 25.

44 The Dream Defenders v. DeSantis et al. at 70.

45 The Dream Defenders v. DeSantis et al. at 70.

46 The Dream Defenders v. DeSantis et al. at 53–4.

47 The Dream Defenders v. DeSantis et al. at 71.

48 The Dream Defenders v. DeSantis et al. at 71–2.

49 The Dream Defenders v. DeSantis et al. at 76.

50 Arkansas Code at §5-71-201(a)(1).

51 General Comment No. 37 at para. 44.

52 Arkansas HB 1508.

53 Georgia SB 1; North Carolina HB 249; Texas HB 3599.

54 Texas HB 3599 at Sec. 72.04(3).

55 Texas HB 3599 at Sec. 72.04.

56 Florida HB 1/SB 484; Florida SB 1096/HB 1419; Georgia SB 171; Iowa SB 342; Iowa HF 251; Kentucky HB 53; Mississippi HB 24/HB 613; Mississippi SB 2374; Mississippi HB 83; Missouri SB 66; Missouri HB 56; Nevada AB 168; New Jersey S 3992; North Carolina HB 330; North Dakota HB 1203; Ohio HB 784; Oklahoma HB 1674; Oklahoma SB 560; Oklahoma HB 1561; Oklahoma HB 2215; Rhode Island HB 5690; Tennessee HB 513/SB 843; Tennessee HB 0668/SB 0944; Texas HB 250; Utah SB 138; Virginia SB 531; Washington SB 5456; Washington SB 5310.

57 Florida HB 1/SB 484; Oklahoma HB 1674; Iowa SF 342.

58 Alabama SB 155; Kentucky SB 44; Kentucky SB 211; Louisiana HB 101; Mississippi HB 24/HB 613; Mississippi HB 763; Mississippi HB 83; Missouri SB 66; New Jersey S 1206; New Hampshire HB 197; Ohio HB 784; South Carolina HB 3491.

59 The Dream Defenders v. DeSantis et al. at para. 76.

60 General Comment No. 37 at para. 15.

61 General Comment No. 37 at para. 55.

62 UN Human Rights Committee, General Comment No. 36, UN Doc. CCPR/C/GC/35, para. 12 (3 September 2019).

63 Iowa SF 342 at §51 Sec. 321/366A.

64 Iowa SF 342 at §44 Sec. 723.1–2.

65 Iowa Code 723.4(f)(1).

66 See Texas v. Johnson, 491 U.S. 397 (1989).

67 Iowa Code 723.4(1)(f)(3).

68 Texas v. Johnson, 491 U.S. 397, 398 (1989).

69 Terminiello v. Chicago, 337 U.S. 1 (1949).

70 Texas v. Johnson, 491 U.S. 397, 397–8 (1989).

71 European Court of Human Rights, *Handyside v. United Kingdom*, Case No. 5493/72, 7 December 1976, at para. 49.

72 General Comment No. 37 at para. 71.

73 General Comment No. 37 at para. 71.

74 Oklahoma HB 1674 at §2.

75 Oklahoma NAACP v. O'Connor, www.courthousenews.com/wp-content/uploads/2021/10/show_temp.pdf.

76 Alabama SB 155; Kentucky SB 44; Kentucky SB 211; Louisiana HB 101; Mississippi HB 24/HB 613; Mississippi HB 763; Mississippi HB 83; Missouri SB 66; New Jersey S 1206; New Hampshire HB 197; Ohio HB 784; South Carolina HB 3491.

77 Missouri SB 66 at §563.031.

78 Representative Brattin's Facebook post can be found here: www.facebook.com/ElectRickBrattin/posts/4033635230000206.

79 MO Rev Stat §574.040 (2013).

80 Missouri Statutes Section 563.031.

81 Missouri Statutes Section 563.031.

82 Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, [UN Doc A/HRC/31/66](#), 4 February 2016, at para. 13 [hereinafter HRC 31/66].

83 HRC 31/66 at para. 25.

84 HRC 31/66 at para. 9.

85 General Comment No. 37 at para. 24.

86 AL Code §13A-11-3 (2012).

87 Alabama SB 155; Florida HB 1/SB 484; Mississippi HB 763.

88 General Comment No. 36 at para. 12.

89 Indiana SB 285; Mississippi HB 24/HB 613; North Carolina HB 321; West Virginia HB 4618.

90 See e.g., Florida HB 1/SB 484 at §768.28(5)(b).

91 U.S. Federal S 4266; Alabama SB 115; Arizona SB 1033; Florida HB 1/SB 484; Georgia SB 171; Georgia HB 289; Indiana HB 1205; Indiana SB 34; Indiana SB 285; Kentucky HB 396; Kentucky SB 44; Kentucky SB 211; Mississippi HB 24/HB 613; Mississippi SB 2374; Mississippi HB 83; New Jersey S 1206 New Jersey S 3992; North Carolina HB 321; North Carolina SB 238; Oklahoma HB 2094; Oregon HB 3329; South Carolina SB 33; Utah SB 138; Virginia SB 531; Virginia SB 5079; Washington SB 5310.

92 Florida HB 1/SB 484; Georgia HB 289; Indiana HB 1205; Indiana SB 34; New Jersey S 3992; Oklahoma HB 2094; Washington SB 5310

93 Florida HB 1/SB 484 at §768.28(5)(b).

94 Florida HB 1/SB 484 at §768.28(5)(b).

95 General Comment No. 37 at para. 76.

96 General Comment No. 37 at paras. 78–79.

97 *The Dream Defenders v. DeSantis et al.* at 90.

98 West Virginia HB 4618.

99 *Id.* at §61-6-5.

100 *Id.* at §61-6-1.

101 *Id.* at §61-6-5.

102 HRC 31/66 at para. 90.

103 HRC 31/66 at para. 57.

104 HRC 31/66 at paras. 57–58.

105 HRC 31/66 at para. 59.

106 General Comment No. 36 at para. 12.

107 HRC 31/66 at para. 59.

108 HRC 31/66 at para. 60.

109 HRC 31/66 at para. 61.

110 HRC 31/66 at para. 61.

111 General Comment No. 37 at para. 89.

112 HRC 31/66 at para. 41.

113 HRC 31/66 at para. 68.

114 HRC 31/66 at para. 70.

115 General Comment No. 37 at para. 30.

116 North Carolina HB 321 at §14-252.2(a).

117 North Carolina HB 321.

118 U.S. Federal S 4266/HR 7786 at §5(h)(4).

119 U.S. Federal S 4266/HR 7786 at §4(c).

120 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, [UN Doc. HRC/26/36](#), 1 April 2014, at para. 75.

121 Arkansas HB 1508; Florida HB1/SB 474; Iowa SF 342; Oklahoma HB 1674; South Dakota SB 176; Tennessee SB 0902; Tennessee HB 8005/8005; Texas HB 9. Missouri enacted SB 26 which initially imposed harsh penalties on blocking traffic during a protest. However, most of the problematic language was stripped from the bill before it became law.

122 Alabama SB 115; Alabama HB 2/SB 3; Alabama HB 445; Arizona SB 1784; Arizona HB 2485; Arizona HB 2309; Arkansas HB 1508; Arkansas HB 1578; Arkansas HB 1898; Arkansas AB 550; Florida HB 1/SB 484; Florida SB 1096/HB 1419; Georgia SB 171 Georgia SB 160; Georgia HB 289; Indiana SB 34; Indiana SB 96; Indiana SB 285; Iowa SF 342; Iowa HF 251; Iowa SSB 1140; Iowa HF 430; Iowa SB 286; Kentucky HB 396; Kentucky SB 44; Kentucky HB 546; Kentucky SB 211; Kentucky HB 164; Maryland HB 645; Maryland HB 198; Massachusetts 1586; Massachusetts HB 1428; Massachusetts HB 3284; Massachusetts S 1036; Massachusetts HB 916; Minnesota HF 1967/SF 1285; Minnesota HF 390; Minnesota HF 1066/SF 918; Minnesota HF 896/SF 803; Mississippi HB 1106; Mississippi HB 24/HB 613; Mississippi SB 2374; Mississippi SB 2283; Mississippi HB 83; Mississippi SB 2474; Mississippi SB 2730; Missouri HB 1914; Missouri HB 1441; Missouri SB 66; Missouri SB 9; Missouri HB 288; Missouri HB 2145; Missouri SB 813; Missouri HB 1259; Missouri SB 26; Nebraska LB 111; Nevada AB 168; New Jersey A 456/S 84; New Jersey S 3261; New Jersey S 3992; New Jersey A 4991; North Carolina HB 249; North Dakota HB 1203; North Dakota HB 1193; Ohio HB 109; Ohio SB 16; Ohio HB 784; Oklahoma HB 1674; Oklahoma 1561; Oklahoma HB 2215; Oklahoma HB 2464; Oklahoma SB 806; Oregon HB 3329; Rhode Island SB 404; Rhode Island HB 5001; South Carolina HB 3491; South Dakota SB 176; South Dakota HB 1288; Tennessee SB 0902; Tennessee HB 8005/8005; Tennessee HB 513/SB 843; Tennessee HB 0668/0944; Texas HB 9; Texas HB 2150; Utah SB 138; Virginia SB 531; Virginia SB 1308; Virginia SB 5074; Washington SB 5310; Washington SB 5456; Washington SB 5009; Wisconsin SB 296/AB 279; Wisconsin AB 396/SB 304.

123 Tennessee HB 8005/SB 8005; Utah SB 173.

124 Arizona HB 2309; Connecticut HB 6455; Indiana SB 96; Indiana HB 1205; Kentucky HB 396; Kentucky HB 546; Kentucky HB 164; Maryland HB 198; North Carolina SB 229; North Carolina SB 335; Nebraska LB 111; Oklahoma SB 592; Oklahoma HB 1822.

125 Florida HB 1/SB 484 at §870.01(3).

126 General Comment No. 37 at para. 15.

127 General Comment No. 37 at para. 44.

128 General Comment No. 37 at para. 55.

129 HRC 31/66 at para. 32.

130 General Comment No. 37 at para. 85.

131 General Comment No. 37 at para. 85.

132 HRC 31/66 at para. 62.

133 *The Dream Defenders v. DeSantis et al.* at 90.

134 Utah SB 173

135 Utah SB 173 at §76-9-102(2)(b)(ii).

136 Tennessee HB 8005/SB 8005.

137 Tennessee HB 8005/SB 8005.

138 Oklahoma HB 1822 at §1(A)(1),(7),(9).

139 *Aduayom et al. v. Togo*, Comm. Nos. 422–424/1990, UN Doc. CCPR/C/51/D/422/1990, 423/1990, 424/1990, para. 7.4 (Human Rights Committee 12 July 1996); *Park v. Republic of Korea*, Comm. No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3 (Human Rights Committee 3 November 1998); Human Rights Committee, Summary Record of the 128th Meeting, para. 20 (statement by Mr. Tomuschat), UN Doc. CCPR/C/SR.128 (16 April 1979).

140 Human Rights Comm., General Comment No. 25 (57), UN Doc. CCPR/C/21/Rev.1/Add.7, 27 August 1996 at para. 25.

141 General Comment No. 37 at para. 32

142 General Comment No. 37 at para. 56.

143 U.S. Federal HR 6653; U.S. Federal HR 289; U.S. Federal HR 8117; Alabama HB 133; Arizona HB 2485; Arizona 2309; Colorado SB18-264; Georgia SB 171; Georgia HB 289; Indiana SB 34; Kentucky SB 211; Oklahoma HB 1565; Michigan HB 6269; Minnesota HF 466/SF 2381; Mississippi HB 24/HB 613; Mississippi SB 2374; North Carolina HB 966; Oregon 3329; Utah SB 138.

144 Alaska HB 295; Arkansas SB 118; California AB 1358; Georgia SB 339; Illinois HB 3409; Illinois HB 2280; Illinois HB 2939; Louisiana HB 269; Michigan HB 4436; Michigan SB 350; Minnesota HF 1383; Missouri HB 442; Missouri HB 2423; New Jersey A 5731; New York A 8342; North Carolina HB 333; Oregon SB 540; South Carolina SB 33; Texas HB 3599; Texas HB 2100; Wisconsin AB 444; Wisconsin AB 299; Wyoming HB 0137.

145 Georgia SB 339; Illinois HB 3409; Texas HB 3599.

146 Indiana SB 34.

147 Indiana SB 34 at §1(3)(a).

148 Georgia SB 171 §8.

149 Minnesota HF 466/SF 2381

150 HRC 31/66 at para. 67.

151 HRC 31/66 at para. 48.

152 General Comment No. 37 at para. 36.

153 HRC 31/66 at para. 9.

154 General Comment No. 37 at para. 33.

155 Missouri HB 1413

156 Missouri HB 1413 at §105.585(2).

157 Illinois HB 3409 at §15(4).

158 Texas HB 3599 at §2.03–2.07.

159 Michigan HB 6269 at §57aa(1).

160 Michigan HB 6269 at §57aa(3)(a).

161 Michigan HB 6269 at §57aa(3)(d).

162 Alabama HB 133; Arizona HB 2485; Arizona HB 2309; Arkansas HB 1508; Florida HB 1/SB 484; Georgia SB 171; Georgia HB 289; Indiana HB 1205; Iowa SF 342; Iowa SSB 1140; Iowa HF 251; Mississippi SB 2374; Mississippi HB 83; Missouri SB 66; Nevada AB 168; New Jersey A 456/S 84; New Jersey S 3261; New Jersey A 4991; North Carolina HB 333; Ohio HB 109; Ohio SB 41; Oklahoma HB 1578; Oklahoma HB 2096.

163 Alabama HB 133; Georgia SB 171; Indiana HB 1205; Iowa HF 251; Nebraska LB 111; New Jersey A 456/S 84; Oklahoma HB 2096.

164 Alabama HB 133; Arizona HB 2485; Arizona HB 2309; Arkansas HB 1508; Florida HB 1/SB 484; Georgia SB 171; Georgia HB 289; Indiana HB 1205; Iowa SF 342; Iowa SSB 1140; Iowa HF 251; Mississippi SB 2374; Mississippi HB 83; Missouri SB 66; Nevada AB 168; New Jersey A 456/S 84; New Jersey S 3261; New Jersey A 4991; North Carolina HB 333; Ohio HB 109; Ohio SB 41; Oklahoma HB 1578; Oklahoma HB 2096.

165 Arkansas HB 1508; Florida HB 1/SB 484; Iowa SF 342.

166 Florida HB 1/SB 484 at §806.13(3); Iowa SF 342 at §42.

167 Florida HB 1/SB 484 at §806.13(3).

168 Kiss, 'Permissible Limitations on Rights,' General Comment No. 34 at para. 25.

169 General Comment No. 37 at para. 36.

170 Florida Criminal Code §806.13, www.flsenate.gov/laws/statutes/2018/806.13.

171 Iowa Code §716.4, www.legis.iowa.gov/docs/code/716.pdf.

172 The Dream Defenders v. DeSantis et al. at 90.

173 Georgia SB 171; Georgia HB 289; Indiana HB 1205; New Jersey A 456/S 84; New Jersey S 3992; New Jersey S 3261; New Jersey A 4991; Ohio HB 109; Ohio SB 41; Oklahoma HB 1578; Oklahoma HB 2096.

174 Georgia HB 289 at §8.

175 Oklahoma HB 1578 at §1(7).

176 Arkansas HB 1508 at §6.

177 Levin, 'Dakota Access pipeline.'

178 Oklahoma HB 1123.

179 Oklahoma HB 1123 at §1(A).

180 Oklahoma HB 1123 at §1(A).

181 Special Rapporteurs on expression and assembly, Communication to the USA.

182 Special Rapporteurs on expression and assembly, Communication to the USA.

183 Special Rapporteurs on expression and assembly, Communication to the USA.

184 Report of the Special Rapporteur on peaceful assembly and association, [UN Doc. HRC/20/27](https://www.unhcr.org/refugees/pdf/HRC/20/27), 21 May 2012, at para. 40.

185 U.S. Federal DOT Legislative Proposal; Alabama SB 17/HB 21; Alabama HB 516; Alabama SB 45; Alabama HB 21; Arkansas HB 1321; Colorado SB 17-035; Georgia SB 1; Idaho SB 1090; Illinois SB 3814; Illinois HB 1633; Indiana SB 471; Kansas SB 172; Kentucky HB 44; Kentucky HB 238; Louisiana HB 727; Louisiana HB 197; Minnesota HB 1558; Minnesota SF 355; Minnesota HF 254/SF 386; Minnesota HF 129/SF 1378; Minnesota HF 3668; Minnesota HF 2966; Minnesota HF 2441/SF 2011; Minnesota SF 3463; Mississippi HB 1243; Mississippi SB 2754; Missouri HB 355; Missouri SB 293; Montana HB 481; North Dakota SB 2044; Ohio SB 33; Ohio SB 250; Oklahoma HB 1123; Pennsylvania SB 887; Pennsylvania SB 652; South Dakota SB 151; South Dakota SB 189; Tennessee SB 264; Texas HB 3557; Texas SB 2229; West Virginia HB 4615; Wisconsin AB 426; Wyoming HB 10; Wyoming SF 0074.

186 Alabama SB 17/HB 21; Arkansas HB 1321; Indiana SB 471; Kansas SB 172; Kentucky HB 44; Louisiana HB 727; Mississippi HB 1243; Missouri HB 355; Montana HB 481; North Dakota SB 2044; Ohio SB 33; Oklahoma HB 1123; South Dakota SB 151; South Dakota SB 189; Tennessee SB 264; Texas HB 3557; West Virginia HB 4615; Wisconsin AB 426.

187 U.S. Federal HR 289; U.S. Federal HB 8117; Alabama SB 152; Alabama SB 115; Alabama HB 2/SB 3; Alabama S 398; Alabama HB 445; Alabama HB 133; Arkansas HB 1508; Arkansas HB 1578; Florida HB 1435/SB 1954; Georgia HB 171; Iowa SF 342; Iowa SSB 1140; Kansas SB 172; Kentucky SB 44; Kentucky HB 164; Minnesota HF 254/SF 386; Minnesota HF 129/SF 1378; Minnesota HF 3668; Minnesota HF 2441/SF 2001; Minnesota SF 3463; Minnesota HF 322/SF 679; New Jersey A 3760; New Jersey AB 4777; North Carolina HB 805; North Carolina HB 249; North Dakota HB 1240; North Dakota HB 1193; Ohio HB 109; Ohio SB 41; Ohio SB 250; Oklahoma SB 15; Oklahoma SB 806; Oklahoma SB 592; Pennsylvania SB 323; Pennsylvania SB 754; South Carolina HB 3491; Tennessee HB 8005/SB 8005; Texas SB 912/HB 3652; Virginia SB 5079.

188 U.S. Federal HR 289; U.S. Federal HB 8117; Alabama SB 152; Florida HB 1435/SB 1954; Minnesota HF 322/SF 679; North Carolina HB 249; Ohio SB 41; Oklahoma SB 592; Pennsylvania SB 323; Pennsylvania SB 754.

189 Alabama SB 115; Arkansas HB 1508; Arkansas HB 157; Kentucky HB 164; North Carolina HB 805; North Dakota HB 1240.

190 General Comment No. 37 at para. 64.

191 Marissa J. Lang, 'The Government might ask activists to repay the costs of securing protests. Experts say it could price them out,' 28 September 2019, Washington Post, www.washingtonpost.com/local/the-government-might-ask-activists-to-repay-the-costs-of-securing-protests-experts-say-it-could-price-them-out/2019/09/28/66f7785a-e07b-11e9-8dc8-498eabc129a0_story.html.

192 General Comment No. 37 at para. 59.

193 General Comment No. 37 at para. 59.

194 General Comment No. 37 at para. 65.

195 General Comment No. 37 at para. 65.

196 General Comment No. 37 at para. 65.

197 Alabama SB 17/HB 21; Alabama SB 115; Alabama HB 2/SB 3; Alabama S 398; Alabama HB 445; Alabama HB 133; Arizona HB 2485; Arizona SB 1142; Arkansas HB 1508; Arkansas HB 1578; Florida HB 1435/SB 1954; Florida HB 1/SB 484; Georgia HB 171; Idaho SB 1090; Illinois HB 1633; Iowa SF 342; Iowa HF 251; Kansas SB 172; Kentucky HB 44; Kentucky HB 396; Massachusetts HB 3284; Minnesota SF 355; Minnesota HB 1558; Minnesota HF 129/SF 1378; Minnesota HF 3668; Minnesota SF 3463; Minnesota HF 2966; Mississippi HB 83; Mississippi HB 1243; Mississippi HB 24/HB 613; Mississippi SB 2374; Mississippi SB 2574; Missouri SB 293; Montana HB 481; Nebraska LB 111; Nevada AB 168; New Jersey S 3261; New York A 11069; North Dakota SB 2044; Ohio HB 109; Ohio SB 33; Ohio SB 41; Ohio SB 16; Ohio HB 784; Ohio SB 250; Ohio HB 1674; Oklahoma HB 2095; Oklahoma HB 1674; Oklahoma HB 1123; Oklahoma SB 806; South Dakota SB 189; South Dakota SB 151; Tennessee SB 264; Texas HB 3557; Texas SB 2229; Washington SB 5310; West Virginia HB 4615; Wyoming HB 10; Wyoming SF 0074.

198 Oklahoma HB 1674.

199 Arizona HB 2485; Arizona SB 1142; Georgia HB 171; Kansas SB 172; Mississippi HB 83; Mississippi HB 24/HB 613; Nevada AB 168; Oklahoma HB 2095; Oklahoma SB 806.

200 Oklahoma NAACP v. O'Connor, www.courthousenews.com/wp-content/uploads/2021/10/show_temp.pdf.

201 Oklahoma NAACP v. O'Connor at 3.

202 21 Okla. Stat. §421.

203 Oklahoma NAACP v. O'Connor at 4.

204 Oklahoma NAACP v. O'Connor at 10.

205 Oklahoma NAACP v. O'Connor at 11.

206 NAACP v. Claiborne Hardware Co., 458 U.S. 886, 920 (1982).

207 Arizona HB 2485; Arizona SB 1142; Georgia HB 171; Kansas SB 172; Mississippi HB 83; Mississippi HB 24/HB 613; Nevada AB 168; Oklahoma HB 2095; Oklahoma SB 806.

208 David Zizzo, 'RICO Act Provides "Heavy Artillery" to Combat Crime,' *The Oklahoman*, 13 March 1989, www.oklahoman.com/story/news/1989/03/13/rico-act-provides-heavy-artillery-to-combat-crime/62620815007/.

209 Oklahoma Corrupt Organizations Prevent Act, Section 1404.

210 CNL, 'US Protest Law Tracker.'

211 Okla. Stat. tit. 21, §1315.

212 O'Brien, 'Florida's "anti-riot" bill takes immediate effect.'

213 Representative Brattin's Facebook post can be found here: www.facebook.com/ElectRickBrattin/posts/4033635230000206.

214 Raust, 'Here's A Reel Of Cars Plowing Through Protesters.'

215 General Comment No. 37 at para. 1.

ARTICLE19

www.article19.org