

Congress of the United States

House of Representatives

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Opening Statement of Chairman Jamie Raskin

Hearing on “Free Speech Under Attack (Part III): The Legal Assault on Environmental Activists and the First Amendment” September 14, 2022

Thank you to our witnesses for participating in this important hearing.

This is our third addressing ongoing attacks on freedom of speech in America. Our first two focused on the assault on free speech in schools. We examined a nationwide push to ban books deemed politically incorrect and censor the expression of students, teachers and families in the classroom, a trend which unfortunately shows no signs of abating in the new school year.

Today we turn our attention to the multipronged effort by the fossil fuel industry to attack its opponents and silence environmental activists through the strategic deployment of civil litigation, specifically so-called SLAPP suits, Strategic Litigation Against Public Participation.

Strategic Litigation Against Public Participation comes in many forms—civil lawsuits alleging defamation, libel, slander, tortious interference with contract, and even allegations that individuals or groups are engaged in a corrupt racketeering enterprise under RICO.

For example, Energy Transfer Partners—the company that is building the Dakota Access Pipeline and which made \$66 billion in revenues in 2021—alleged that environmental non-profits and other activists were engaged in criminal racketeering violations against the company. Its claim was that the defendants’ First Amendment-protected activities—such as organizing, sharing information, and protesting against pipeline construction through environmentally sensitive and native lands—constituted predicate acts sufficient to trigger RICO Act liability and cause the award of millions of dollars in damages.

After several years and millions of dollars spent in litigation by the defendants, the case was thrown out of federal court. But great damage was already done to the groups and individuals sued through the staggering time, financial, and emotional costs of defending against a meritless but overwhelming difficult lawsuit.

To make matters worse, after its case was thrown out of federal court, Energy Transfer simply refiled the same claims in state court, creating another RICO case that is still ongoing.

Similarly, Exxon invoked a rarely used Texas law to try to depose city officials from California in an apparent effort to set up another SLAPP RICO case after several municipalities sued for damages related to sea level rise. Again, after several years of litigation, the case was rejected by the Texas Supreme Court for lack of personal subject matter jurisdiction.

Wealthy and powerful corporate entities are thus dragging citizens and public interest opponents through meritless but protracted and expensive litigation to expose anyone who dares stand up to them to financial and personal ruin.

In its work to silence its critics, the fossil fuel industry is also pushing for the passage of anti-protest laws dressed up as “critical infrastructure protection” statutes.

The first of these laws was passed in Oklahoma in 2017, with the explicit purpose of punishing pipeline protestors. Although the state already had criminal penalties for trespass, vandalism, destruction of property, and tampering, the new law created draconian penalties for these same crimes in the vicinity of critical infrastructure, such as terms of up to ten years in prison for vandalism or defacing property.

Under the law, individuals and organizations could be fined or sued for tens of thousands of dollars for involvement in perfectly lawful activities, like letting a critical infrastructure protestor stay in your home or camp on your property.

Since that time 16 states have followed with substantially similar or identical statutes, which dramatically increase civil and criminal penalties for what would otherwise be misdemeanor civil disobedience offenses like “disorderly conduct” or clearly First Amendment protected activities like rallying and chanting.

Anne White Hat, an indigenous Water Protector, who we will hear from today, was subjected to one of these “critical infrastructure” laws. In Louisiana, where she was apprehended by law enforcement officers who were moonlighting on the fossil fuel industry’s payroll, she faced up to five years of hard labor for the crime of trespass. This is despite being permitted to be on the land she was removed from by the landowners.

It is crucial that Congress protect the rights of American citizens and civic groups to engage in lawful political protest and organizing without being subjected to ruinously expensive and meritless retaliatory litigation.

Presently, 30 states have, in a bipartisan manner, adopted anti-SLAPP laws to protect their citizens from baseless lawsuits. However, 18 states do not have these laws in place and there has never been a federal anti-SLAPP law. In the coming days, I hope to introduce a strong federal anti-SLAPP corollary and I hope my friends on both sides of the aisle will join me in our efforts to end this chilling and punitive practice of stifling and discouraging civil action.

I look forward to hearing from our witnesses.

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