

**FREE SPEECH UNDER ATTACK (PART III):
THE LEGAL ASSAULT ON ENVIRONMENTAL
ACTIVISTS AND THE FIRST AMENDMENT**

HEARING

BEFORE THE
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL
LIBERTIES

OF THE

**COMMITTEE ON OVERSIGHT
AND REFORM**

HOUSE OF REPRESENTATIVES

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Documents are available at: docs.house.gov.

FREE SPEECH UNDER ATTACK (PART III): THE LEGAL ASSAULT ON ENVIRONMENTAL ACTIVISTS AND THE FIRST AMENDMENT

Wednesday, September 14, 2022

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2154, Rayburn House Office Building, and via Zoom; Hon. Jamie Raskin (chairman of the subcommittee) presiding.

Present: Representatives Raskin, Wasserman Schultz, Kelly, Pressley, Norton, Mace, Higgins, Sessions, Biggs, and Donalds.

Mr. RASKIN. Good morning. The committee will come to order.

Without objection, the chair is authorized to declare recess of the committee at any point.

Without objection, I will now recognize myself for an opening statement.

Thank you to our witnesses for coming and participate in this important hearing. It is our third addressing ongoing attacks on freedom of speech in America. Our first two focused on the assault on freedom of speech on campus, in schools, K through 12, as well as in colleges. We examined a nationwide push to ban books deemed politically or ideologically incorrect and censor the expression of students, teachers, and families in the classroom, a trend which, unfortunately, shows no signs of abating as we begin the new school year.

Today, we turn our attention to the multi-pronged 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. SLAPP suits come in many forms: civil suits 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 nonprofits and other activists were engaged in criminal racketeering violations against the company. Its claim was the defendants' First Amendment protected activities, such as organizing, talking to neighbors, communicating with people online,

sharing information, and protesting against pipeline construction, constituted predicated 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 simply thrown out of Federal Court as meritless. But great damage was done in the meantime to the groups and individuals sued to the staggering time and financial, and emotional, and political costs of having to defend against the meritless, but overwhelmingly difficult lawsuit. To make matters worse, after its case was thrown out of Federal Court, Energy Transfer simply re-filed the same claims in state court, creating essentially another RICO case that is still ongoing today.

Similarly, Exxon invoked to really use 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 the rising sea levels. Again, after several years of litigation, the case was rejected by the Texas Supreme Court for lack of personal subject matter jurisdiction. But in the meantime, the damage was done with the strategic efforts to discourage and to punish citizens just for exercising their First Amendment rights.

Wealthy and powerful corporate entities are dragging citizens and public interest opponents through meritless, but protracted and extremely costly litigation to expose anyone who dares to 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, and we are going to hear about these.

The first of these laws was passed in Oklahoma in 2017, with the explicit purpose of punishing pipeline protesters. Although the state already had criminal penalties for trespass, vandalism, destruction of property, and tampering, the new law created draconian penalties for the exact same crimes in the vicinity of critical infrastructure, such as terms of up to 10 years in prison for vandalism or defacing property. Under that law, individuals and groups could be fined or sued for tens of thousands of dollars for involvement even in 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 activity, like rallying and chanting, and taking a position on a public policy question.

Anne White Hat, an indigenous water protector, who we are going to have the benefit of hearing 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 as private officers, she faced up to five years of hard labor for the crime of trespass. This is despite having been permitted to be on the land that 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 from whatever political perspective without being subjected to ruinously expensive

and meritless retaliatory litigation. Presently, 30 states have, in a bipartisan manner, adopted anti-SLAPP laws to protect citizens from baseless lawsuits. However, 18 states don't 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 friend, Ms. Mace, and friends on both sides of the aisle will join me in our efforts to end the chilling and punitive practice of stifling and discouraging civic action by the people of the United States. I look forward to hearing from our witnesses today.

And with that, I am happy now to recognize the very distinguished ranking member, Ms. Mace, for her opening statement.

Ms. MACE. Thank you, Mr. Chairman, and I want to thank all the witnesses for being here this morning today with us.

South Carolina's 1st congressional District is the district that I represent, and we are on the front lines of American scientific, technological, and even environmental innovation. In fact, tens of thousands of people who work in these sectors call South Carolina's 1st congressional District home, and we are very proud of that. These jobs require a high degree of expertise and training with an eye for ensuring tomorrow's America is more advanced, more prosperous, more safe, and, in fact, more environmentally friendly and more green.

The beautiful coastal district that I am honored to represent faces unique environmental challenges that I have tackled since the first day I ever took office, as an example of this, signing on, as an original co-sponsor with my fellow Republican from Florida, H.R. 4696, the American Shores Protection Act, which would codify the former President's executive order to extend a moratorium on oil and gas drilling off the coast of South Carolina, Georgia, and Florida. I am also proud to have 100 percent rating with the Conservation Voters of South Carolina. I am often sometimes the lone Republican to vote on environmental measures when we are on the floor of the House. And I maintain this perfect rating and score not by trumpeting alarmist environmental propaganda, but by advancing sensible, practical, logical solutions to face South Carolina's challenges.

I want to make myself clear: the low country depends on the preservation of our region's environment, both for our prosperity and our region's wellbeing. Billions of dollars we depend on in our economy because of the tourism that we have. We have clean water, clean beaches, clean air, and sometimes we like to say our beaches are paved with gold, they are so beautiful. Left wing, environmentalists, however, far too often try to shut down American industry without offering reasonable replacements. With the state of energy prices in the U.S. today, it is not time for policies that will make energy more expensive and less reliable, but we got to work together on our future. And our reliance on oil and gas to fuel our lives, it is not going away tomorrow, nor should it. We have time to transition to greener, more robust energy policies.

We must maintain robust domestic energy policies to allow ourselves and our allies to be energy independent. While we tap into billions of barrels of oil and natural gas here at home, we need to develop alternatives like nuclear, wind, solar, and geothermal. In

fact, earlier this year Representative Ro Khanna and I of California, when we did a bill to ban Russian oil and gas imports, we were looking for the government to study alternative forms of energy and look at the benefits of using those in the future. The uniqueness of that bill, we were very proud to work on.

Multiple Biden Administrations, however, have called for censoring de-platforming of individuals who say things that they disagree with. They call anything disagreement, disinformation, and so I see this issue of censorship actually being two-sided. I think both sides have done some things that are wrong, inherently wrong, inherently violate civil rights, inherently violate the Constitution. But while we are having this hearing today, I don't know why we are talking about, you know, just attacks on the left, but attacks have happened by this Administration. In fact, Gina McCarthy, the White House climate advisor, said during an interview that Big Tech companies should censor information she disagrees with about the environment and climate change, saying, "Tech companies have to stop allowing specific individuals over and over again from spreading disinformation. We need the tech companies to really jump in here."

Jen Psaki, former White House Press Secretary called on Big Tech to do more to censor the Joe Rogan podcast, for example, for having interviewed people with dissenting views on the Administration's COVID response. After Spotify put a disclaimer on the podcast for listeners who chose to stream it, she said their actions didn't go far enough, saying, "So this disclaimer, it is a positive step, but we want every platform to continue doing more to call out misinformation and disinformation while also uplifting accurate information." Of course, the implication is that the Biden Administration dictates truth, while also dissenting view is labeled disinformation.

Mark Zuckerberg recently acknowledged during an interview on the Joe Rogan podcast that Facebook reduced distribution on its platform of a New York Post article, breaking the news in October 2020 about Hunter Biden's abandoned laptop. They did this after a general request from the FBI. Zuckerberg stated, "We just kind of thought, hey, look, if the FBI, which I still view as legitimate institution in this country, is very professional law enforcement, if they came to us and tell us that we need to be on guard about something, I am going to take that seriously."

Emails obtained from the Federal Government through litigation earlier this month show extensive coordination between 45 Biden Administration officials and social media company employees to censor content related to COVID-19. So why aren't we looking into government-sanctioned threats against free speech? Calls to sensor or de-platform certain people the Administration disagrees with politically or even entire news stories that could be harmful to a political candidate are inappropriate and foster a culture that is hostile to our fundamental freedom of speech.

And it is not one side or the other. Oftentimes, I think it can be both. Direct collusion by the government to silence opposition is even more troubling. We should also be talking about the Administration's decision to resume the undemocratic practice of sue and settle at the EPA, which allows special interest groups to make

rules through lawsuits instead of the rulemaking process. This prevents the voices of Americans from being heard by removing them from rulemaking process while allowing environmental groups to have more say in policy than the American public, and don't get me started on the racket of lawsuits by environmental groups here today.

While the Biden Administration has been attacking free speech, I have also been working on bipartisan solutions, the issues facing not only my state, but our country. This is why I work across the aisle to promote sensible energy policy. We can only solve the hardest problems in our country with bipartisan solutions, and only then will we accomplish the demands of the American people.

I want to thank the chairman and the witnesses for their participation today, and I did want to ask unanimous consent, Mr. Chairman, to enter the following articles into the record.

Mr. RASKIN. Without objection.

Ms. MACE. Thank you. An Axios article detailing how Gina McCarthy called on Big Tech to crack down on climate change misinformation; an article from The Washington Post detailing how then White House Press Secretary Jen Psaki called for Spotify to do more than add a disclaimer to Joe Rogan's podcast; an article from CNN detailing how Mark Zuckerberg revealed Facebook was acting on a general FBI warning when it decreased distribution of a New York Post story on the infamous laptop; an article from Deseret News, detailing how dozens of Biden Administration officials worked with social media companies to censor dissenting COVID-19 opinions. Thank you, and I yield back.

Mr. RASKIN. All right. Without objection, they will be entered in the record. We look forward to reading those, and thank you for your opening statement, Ms. Mace.

Mr. RASKIN. Now I have the privilege to introduce our witnesses today. First, we have Professor Anita Ramasastry, who is the Henry Jackson Professor of Law at the University of Washington School of Law. And then we will hear from Deepa Padmanabha, who is the deputy general counsel for Greenpeace USA and a constituent of mine, I understand. Then we will hear from Daren Bakst, a senior research fellow in Environmental Policy and Regulation at the Center for Energy Climate Environment, the Heritage Foundation. Then we will hear from Elly Page, a senior legal advisor at the International Center for Not-for-Profit Law. And last, we will hear from Anne White Hat, a member of the Sicangu Lakota Nation from L'eau Est La Vie Camp.

The witnesses will be unmuted so we can swear them in. If everybody would please stand and raise your right hands.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Mr. RASKIN. All right. Let the record reflect that all the witnesses have said yes, and with that, we will go ahead, and your written statements will be made part of the record. And with that, Professor Ramasastry, you are first. You are now recognized for your testimony.

**STATEMENT OF ANITA RAMASASTRY, HENRY M. JACKSON
PROFESSOR OF LAW, THE UNIVERSITY OF WASHINGTON
SCHOOL OF LAW**

Ms. RAMASASTRY. Thank you. Chairman Raskin, Ranking Member Mace, members of the committee, thank you for the invitation to participate in this important hearing this morning. My name Anita Ramasastry. I am the Henry M. Jackson Professor of Law at the University of Washington School of Law in Seattle, and from 2017 to 2019, I served as president of the Uniform Law Commission, which is an unpaid role. The Uniform Law Commission, established in 1892, provide states with nonpartisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. And I should say it is a membership organization of all the 50 states, the District of Columbia, and Puerto Rico, and the Virgin Islands. From 2016 to 2022, I also served as an expert appointed by the U.N. Human Rights Council to work with governments, business, and civil society to address issues relating to corporations and human rights abuses.

The views I expressed in this testimony are my own and should not be construed as representing any official position of the organizations I mentioned above.

I will make three key points today and will be pleased to answer questions from the committee. The first one is that there is indeed a growing trend of SLAPP suits as a means to silent dissent, not only in the United States, but globally. Across the globe, human rights defenders who speak out about issues of public concern face a range of attacks because they raise concerns about human rights, risks, and harms associated with economic and environmental activity. SLAPP suits, which are criminal or civil lawsuits brought or initiated by business entities to intimidate critics, are one type of attack. These lawsuits can drain the resources of community members, environmental advocates, and journalists who speak out in support of human rights and the environment. The reason is an escalation globally and in the U.S. in SLAPP litigation as a tool to close civic space. The fossil fuel sector is one case in point.

The Business and Human Rights Resource Center, a respected documentation center, notes that between 2015 and 2021, it identified 355 cases that bear the hallmarks of SLAPP suits brought or initiated by business actors against individuals and groups relating to their defense of human rights with the environment. These suits were analyzed against a larger backdrop of more than 3,100 reported attacks on human rights defenders globally. So again, I think it is the numbers and the volume that we should be concerned about. There also seems to be a rising volume of legal actions by the energy sector, in particular, against civil society groups.

The Business and Human Rights Resource Center again, which tracks these SLAPP actions found that 12 carbon majors brought at least 24 lawsuits against 71 environmental human rights defenders between 2015 and 2018, seeking a total of \$904 million in damages. Just this week, Birthright International released a report in which it identified 152 cases over the past 10 years where the fossil fuel industry has used SLAPP suits and what it describes as

other judicial harassment tactics and attempts to silence or punish its critics in the United States.

Now, I will note briefly that many of the oil and gas companies or fossil fuel companies that we are focusing on today have made strong visible public human rights commitments. Those commitments include adherence to international frameworks of guidance that call upon companies, and they have made commitments to respect the rights of civil society to consult and to engage with them, and to allow them to peacefully assemble and express their views. So what we are seeing in the trend in terms of SLAPP litigation is inconsistent with those public commitments that these companies have made.

My second point is that SLAPP actions do chill free speech and assembly, that there is a larger cost, not only for those organizations that are sued, but for access to information by the public more broadly. So why should we be concerned about these numbers? The reason is that SLAPPs can impose devastating consequences on those who are sued, draining them financially and emotionally, and discouraging them from exercising their right to free speech. Civil society groups that face these suits may opt to end their advocacy rather than being encumbered with protracted litigation and often end up settling actually in ways that will restrict through settlement the right to free speech.

Now, SLAPPs are a threat to public participation, democracy, and the rule of law, and a direct attack on rights, such as the right to freedom of expression and assembly. As an expert who has worked with the U.N. observing the impacts of these proceedings on communities and individual human rights defenders and organizations globally and in the U.S., I have seen the effect of prolonged and protracted litigation that often involves multiple parties and cast a wide net. So while I speak about this in the aggregate, you will hear from other witnesses today about what that toll is actually to individuals and organizations. But I can attest to that as an expert who has worked for years in the field with these organizations.

Now, my third point is about the need to restore balance. And I think this is consistent with what we have heard from Chairman Raskin and Ranking Member Mace, which is that Congress should address this trend, and restore balance, and promote avenues for free expression and assembly. I believe a key solution here is the adoption of anti-SLAPP laws that allow courts to review cases at an early stage in the proceedings to see if they are indeed a public concern and whether the SLAPP suit itself is frivolous or has merit.

Now, in recent years, as you heard from the chairman, several states have adopted or amended their anti-SLAPP laws. As of April 2022, 32 states and the District of Columbia have anti-SLAPP laws, but, again, 18 do not. The Uniform Law Commission recently drafted and approved for enactment the Uniform Public Expression Participation Act. This is a state-of-the-art anti-SLAPP law for the states and was designed to be adopted by states, and has already been enacted in states as diverse as Kentucky and Washington. The act contains a clear framework for the efficient review and dis-

missal of SLAPPs. If a respondent cannot establish a prima facie case, then claims can be dismissed.

Now, with the state reform is currently underway, there is another question about whether we need a Federal law, and I believe the answer is yes and that they can coexist. So the state statute and the Federal, as a matter of cooperative federalism, if a corporation sues the civil society organization in the Federal court for a state law tort, for example, such as libel, today, it is not clear whether they can invoke a protection of a state law in Federal court, assuming one even exists. The Federal law combined with the stronger state law will also preclude forum shopping.

So in conclusion, I urge Congress and the House of Representatives, I hope that they will act to restore balance and to protect and preserve the ability of civil society to participate in public debates concerning important topics, such as climate change, the environmental impacts of the fossil fuel industry, and other related topics without fear of being dragged into lawsuits that will take a significant toll on their ability to engage in the civic sphere. Thank you.

Mr. RASKIN. Thank you, Professor Ramasastry. And now, Ms. Padmanabha, you are recognized for your five minutes.

**STATEMENT OF DEEPA PADMANABHA, DEPUTY GENERAL
COUNSEL, GREENPEACE USA**

Ms. PADMANABHA. Chairman Raskin, Ranking Member Mace, and members of the committee, thank you for the invitation to participate in today's hearing. My name is Deepa Padmanabha and I am deputy general counsel for Greenpeace USA, one of the leading organizations exposing global environmental problems and promoting solutions that are essential to a green, just, and peaceful future. I am pleased to have the opportunity to discuss attacks on free speech in the form of strategic lawsuits against public participation, or SLAPPs. I walked through the doors of Greenpeace 11 years ago because I truly believed in its mission. I never could have imagined that a few years later, my career would become dedicated to protecting our fundamental right to free speech.

In May 2016, Greenpeace USA was hit with its first SLAPP suit filed by Resolute Forest Products, one of Canada's largest logging companies, alleging damages of \$100 million for publicly challenging the company's forestry practices. And not long after, in 2017, we were hit with a very similar suit brought by Energy Transfer, the company behind the Dakota Access Pipeline, claiming \$300 million in damages for allegedly orchestrating the resistance at Standing Rock. At issue in both lawsuits was our right to make the public aware of business practices that we believe are harmful to both our health and our planet. What made these lawsuits different from previous SLAPPs was the use of the Racketeer Influenced and Corrupt Organizations Act, or RICO, a law that was designed to go after the mafia. These companies were trying to equate advocacy work to protect our planet with organized crime.

And the similarity between the lawsuits was no coincidence. It was the same lawyers behind both suits who had indicated they were shopping this tactic around. It was clear that these corporations were trying to send a message to small groups, activists, and anyone and everyone with a voice: watch out, or you could be next.

We knew we had to fight these lawsuits head on because their implications reached well beyond Greenpeace. The fundamental right to speak out, organize, resist, and show solidarity across movements was under threat. Our First Amendment right to free speech was in jeopardy. Smaller groups could be sued into silence by the mere filing of a suit of this magnitude, which is the precise intention behind this tactic.

We quickly realized that we were not alone in this fight. Groups across issue areas, from the environment, to labor, to human rights and beyond, came together to send a message that when you go after one of us, you go after all of us. That was the birth of Protect the Protest, a coalition that was created to fight back against the use of SLAPPs. While we successfully got RICO thrown out of both lawsuits, these corporations continue to pursue whatever claims they can to consume our resources and distract us from our work to protect the planet and its people. They also used other SLAPP tactics, including third party subpoenas to go after small groups and individuals. The costs associated with these lawsuits are a drop in the bucket for these communities, but they are an existential threat to public watchdogs, who play a critical role in our society.

So here we are more than six years from when the first SLAPP was filed against us, still forced to invest time and resources into these legal battles that otherwise would have been used to protect communities and the environment from toxic pollution and the existential threat of climate change. While our window to fight the climate crisis continues to shrink, we have to fight these suits head on because the voices of those who protect our planet in our communities cannot be silenced.

Whether you support or oppose our positions, it is non-negotiable that Greenpeace and everyone else has a right to freely discuss, criticize, and/or denounce practices that impact our health and our livelihoods. That is what the First Amendment guarantees. SLAPPs put that healthy debate on ice. Corporations with deep pockets can effectively buy freedom from criticism by censoring their opponents. Now is a critical moment for Congress to act and introduce Federal anti-SLAPP legislation. Thirty-two states and the District of Columbia have enacted commonsense anti-SLAPP legislation, and all were introduced in a bipartisan or nonpartisan fashion.

While Federal legislation might not put an end to all SLAPPs, it would be a significant step toward becoming a Nation of justice where our fundamental right to speak truth to power is protected. Thank you.

Mr. RASKIN. Thank you so much for your testimony. Now, Mr. Bakst, you are recognized for your five minutes.

**STATEMENT OF DAREN BAKST, SENIOR RESEARCH FELLOW,
ENVIRONMENTAL POLICY AND REGULATION, CENTER FOR
ENERGY, CLIMATE AND ENVIRONMENT, THE HERITAGE
FOUNDATION**

Mr. BAKST. Chairman Raskin, Ranking Member Mace, and distinguished members of the subcommittee, thank you for this opportunity to discuss governmental efforts to chill speech and limit pub-

lic participation on climate, energy, and environmental issues. My name is Daren Bakst, and I am senior research fellow for environmental policy and regulation at the Heritage Foundation. The views I express in this testimony are my own and shouldn't be construed as representing any official position of the Heritage Foundation.

Open discourse should be the norm in this Nation, yet when it comes to energy and environmental issues, the chilling of speech is too often a reality. There are regular ad hominem attacks, such as the inappropriate label, "climate deniers," for those who do not follow the climate narrative. But I guess far worse, there are calls to put people in jail for their views on climate. James Hansen, one of the most well-known climate activists, argued that CEOs of fossil fuel companies should be tried for high crimes against humanity and nature. UNESCO's website is prominently featuring an article arguing that it is time to prosecute climate deniers. Federal legislators have urged the Department of Justice to prosecute climate skeptics using RICO, actually.

There are recent reports of Biden Administration officials pressuring social media companies to restrict speech, such as speech connected to climate policy. The government appears to be doing an end run around the First Amendment by using others to block speech it could otherwise not directly censor on its own. This is being done apparently to go after concerns about misinformation, but misinformation as just another way of labeling speech that one doesn't like, including subjective speech, is neither right nor wrong. These actions are inexcusable.

It is incredible that in United States where freedom of speech is held so sacred, that defending such a basic right is even necessary, but that is where we find ourselves right now. Plus, if we are really concerned about misinformation, it certainly should not come from government trying to dictate what citizens can say and not say. It should focus on how the government itself is disseminating misinformation. Congress has long recognized the problem of government disseminating misinformation and created the Information Quality Act to empower the American people to address these problems.

So now I would like to quickly turn to some regulatory issues, and, unfortunately, there are two examples, actually, I think, that show the limiting of public participation and the different perspectives that people have.

In April 2021, EPA Administrator Michael Regan dismissed all of the members of the legally required panels of the Clean Air Scientific Advisory Committee and the EPA Science Advisory Board. This shocking move, at a minimum, gives the impression that the administrator wants to hear only from those who will support the Biden Administration's agenda. Second, the problem of sue and settle looks to be coming back. The sue and settle tactic gets around the protections afforded to citizens by Congress through the Administrative Procedure Act. In general, environmental groups will sue an environmental agency, like EPA, to require them to issue a specific rule. There are times when this can affect the substance of rules. These agreements are usually made behind closed doors without public input and often without interveners. The Trump Ad-

ministration issued a memo to prevent abuses and help to promote public participation, but the Biden Administration revoked this memo.

So what should be done? Well, first of all, Congress needs to ensure that the Federal Government doesn't directly or indirectly censor Americans for their opinions. Congress should focus any concerns regarding misinformation where it belongs: misinformation disseminated by the government. Congress should require independent reviews of the foundational studies informing an agency's understanding of major issues, and Congress should take action to prohibit sue and settle.

There is going to be disagreement on policy objectives, and even when there is agreement on the objectives, there will be disagreement on how to achieve the objective. Disagreement doesn't call for attacking those we disagree with, but instead engaging in thoughtful and respectful discourse on the issues. But the government itself is taking actions that are counter to these basic principles of this country and the Constitution. Congress should put an end to these actions to help to create an environment where people are not scared to speak on the issues, but empowered to voice their concerns, regardless of their perspectives on these issues. Thank you.

Mr. RASKIN. Thank you very much for your testimony, Mr. Bakst. And now, Ms. Page, you are recognized for your five minutes.

**STATEMENT OF ELLY PAGE, SENIOR LEGAL ADVISOR, THE
INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW**

Ms. PAGE. Thank you, Chairman Raskin, and good morning to you. Thank you, Ranking Member Mace, members of the subcommittee. My name is Elly Page, and I am a senior legal advisor with the International Center for Not-for-Profit Law. This morning, I would like to share with you why we at ICNL and so many others are concerned that critical infrastructure laws threaten Americans' First Amendment rights.

In recent years, people across the country have turned out to protest new pipeline projects: Floridians worried about how pipelines will affect their drinking water, farmers in Illinois concerned about their fields, indigenous leaders in Minnesota wanting to protect tribal lands, fishermen in Louisiana fearing the loss of their livelihoods. In response, many states have introduced laws that can criminalize nonviolent protests around pipelines. As the chairman noted, Oklahoma was the first of these. In 2017, the state enacted a law creating new felonies that can cover protesters near "critical infrastructure." Under the law, critical infrastructure is defined to include pipelines and a variety of other fossil fuel facilities. That same year, the American Legislative Exchange Council, or ALEC, which has ties to fossil fuel companies, began circulating a model bill based on Oklahoma's law. Since then, at least 16 other states have enacted very similar laws.

Supporters of the laws say that they're needed to protect infrastructure from damage by bad actors, but let's be clear: these laws are unnecessary. In most, if not all, states, existing law already criminalizes conduct that can end up damaging our Nation's infra-

structure. When the Governor of Minnesota vetoed a critical infrastructure bill, he said that was why: existing state law on trespass and property damage was deficient. Instead, these new laws, many of which are adopted with fossil fuel industries' explicit support, can be used to target pipeline protesters by criminalizing and chilling nonviolent protest activity.

They do so in three key ways. First, the laws create extreme penalties. Under Arkansas' critical infrastructure law, a protester can face six years in prison for peacefully trespassing onto a pipeline construction site. In several states, those found guilty under critical infrastructure laws can also be sued by pipeline companies, opening them up to costly civil lawsuits, like the kind we've heard about this morning. We at ICNL have heard from folks on the ground who want to protest lawfully but are afraid of getting caught up in these kinds of penalties, who have opted to stay home instead of speak out.

Second, the laws are overbroad and vague. North Dakota's law bans inhibiting or impeding pipeline construction. Such broad language covers constitutionally protected speech. It could seemingly even cover a lawful protest that is far from any pipeline but delays pipeline equipment. Louisiana's law, meanwhile, bans unauthorized entry onto pipelines, but it is not clear what that means in a state with over 125,000 miles of pipeline, much of which isn't marked or even visible, so it is not clear where individuals can and can't be legally present. And the stakes are high: five years in prison. Third, in many cases, the laws make protesters and organizers liable for other people's unlawful conduct. They effectively codify guilt by association. Under Oklahoma's law, if a church group organizes a protest and one person at the protest trespasses, the group could be charged as part of a criminal conspiracy and fined a million dollars.

Critical infrastructure laws are extreme, overbroad, and unnecessary. Advocates have successfully challenged parts of these laws, and courts have found them to be unconstitutional, but most remain on the books and continue to be used to target and harass nonviolent protesters, as we will hear from my fellow witness, Ms. White Hat.

Congress can take action to protect Americans First Amendment Rights, first, by ensuring that Federal energy legislation doesn't intentionally strengthen enforcement of critical infrastructure laws, but instead includes safeguards for peaceful protest; second, by encouraging the Department of Justice to file amicus briefs in support of litigation against critical infrastructure and other anti-protest laws; and third, by enacting legislation, like a Federal anti-SLAPP Law that can help protect protesters and protest organizers from being silenced by industry backed lawsuits.

Thank you, and I would be happy to answer your questions.

Mr. RASKIN. Thank you very much, Ms. Page. And now, Ms. White Hat, you are recognized for your five minutes of testimony.

**STATEMENT OF ANNE WHITE HAT, SICANGU LAKOTA, L'EAU
EST LA VIE CAMP**

Ms. White Hat. [Speaking native language]. Relatives, I greet you today with a heartfelt handshake in my beautiful Lakota lan-

guage. I am Sicangu Lakota from Rosebud, South Dakota, and a resident of the state of Louisiana. I am a mother, and herbalist, and a water protector. In 2016, I returned to my ancestral home to join the indigenous-led resistance to Energy Transfer Partners' plan to build the Dakota Access Pipeline and assault the waterways and unceded land of the Lakota Oyate in violation of the 1868 Fort Laramie Treaty. This pipeline cut across four states and under the Mississippi River, posing grave threats to the contours of Mother Earth's real critical infrastructure, including the waterways of the Mississippi River down to the Gulf Coast of Mexico.

As a mother, I never intended to get arrested. However, on September 18, 2018, I was arrested and charged with two felony counts under new amendments to Louisiana's critical infrastructure law. I was facing up to 10 years in prison. I was told that I was being arrested for trespassing two weeks prior on remote land being worked on by the pipeline company in the Atchafalaya Basin, despite my having the expressed permission of the landowners to peacefully protest there. Louisiana State Court later ruled that it was, in fact, the pipeline company that was trespassing, yet we were the ones brutally assaulted and arrested that day, and then the weeks following by the same uniformed sheriff's deputies working privately for the pipeline company, and also by pipeline workers themselves. Over a dozen of us have for several years had the possibility of lengthy prison sentences hanging over our heads.

But sharing what happened to me is not the only reason why I am here today. I want to talk about the coordinated effort of industry, lawmakers, and law enforcement to isolate, attack, and silence our movement. This collusion emerges from a centuries-long history of attacks on my people as we resist the consolidation of power over this country by a white supremacist system bent on maintaining exclusive authority over our land. A key tactic in the coordinated attack on us is known as lawfare: the weaponizing of the legislative process to attack social movements.

The first so-called critical infrastructure law emerged in Oklahoma in 2017 and was picked up by the American Legislative Exchange Council, or ALEC, a lobbying front group for corporations that masquerades as a nonprofit. ALEC uses a nationwide network of industry-backed lawmakers to catapult critical infrastructure laws into states across the country. ALEC-affiliated lawmakers have been the sponsors of draft critical infrastructure laws in all but 5 of the 23 state legislatures where they have been introduced, many of them as lead sponsors. Understand that existing Louisiana law already criminalized the types of activities industry claimed it was focused on. All this law did was ratchet up formerly misdemeanor offenses to much more serious criminal felony charges for First Amendment protest activity.

At their heart, critical infrastructure laws are intended to prevent people from joining the groundswell of opposition to fossil fuel extraction because this movement threatens their profits. The new law only served as a pretext to inflict more violence against us. Local police working privately for pipeline companies wasted no time before violently arresting us, as I briefly described earlier. The coordinated attack on our movement also included efforts to silence the journalists who risked their safety and wellbeing to tell the

world about what was happening to us. Karen Savage, an investigative reporter who is here today, was arrested twice under the felony trespassing law while documenting illegal construction and the tactics used against us. She was assaulted by a pipeline worker while filming the violent arrest of three peaceful water protectors. When she reported the assault to the St. Martin Parish Sheriff's Office, it went nowhere. She later learned that the lieutenant who took her report was among the 58 sheriff deputies moonlighting for the pipeline company, a practice that left no one to protect the rights of water protectors and reporters.

In our experience, amendments to this law only serve to embolden lawlessness amongst oil industry supporters. Escalating violence has been used for centuries against people who challenge the concentration and misuse of power. This is nothing new to us, but what we experienced needs to be recognized by all as a coordinated assault on a movement. Indigenous people continue to be the first responders to the worsening effects of climate crisis. Our actions are part of our commitment as caretakers of the places we live in.

We are the proud founders and sustainers of an ever-growing global movement to defend against the irrevocable destruction of our Mother Earth. It is in that spirit that we call upon all in this committee to bring your power to bear in support of the water protectors that are defending what is precious to us all. Thank you very much for your time.

[Speaking native language].

Mr. RASKIN. Thank you very much for your testimony, Ms. White Hat. And with that, I am going to go to Ms. Kelly to begin our member questioning of the witnesses.

Ms. KELLY. Thank you, Mr. Chairman. Thank you, Ranking Member for holding this hearing, and thank you to the witnesses.

An emerging issue that relates to anti-SLAPP, and anti-protests laws, and what are known as anti-ESG bills, increasingly, commercial investors are putting more emphasis on environmental, social, and governance, or ESG, issues in selecting stocks while still meeting investment goals. While ESG has grown in popularity in recent years and has long been considered by financial institutions in making investment decisions, ESG has become a new boogeyman and a cudgel to be used against anyone that opposes the fossil fuel and gun industries.

So far anti-ESG legislation has been adopted or introduced in 17 states. Texas passed a bill in 2021 that prohibits any governmental entity in the state from doing business with any financial institution that has divested from the oil and gas industry. This law forced five of the state's largest municipal bond underwriters out of Texas, so now while Texas can say their anti-ESG bill is another feather in their anti-woke cap, it is costing Texas taxpayers hundreds of millions of dollars.

I would like to introduce into the record a University of Pennsylvania study from earlier this year, which explains that this new law will cost Texas entities an additional \$303 to \$532 million in interest on the first eight months of the law's enactment.

Mr. RASKIN. Without objection.

Ms. KELLY. Sorry. Professor Ramasastry, what can you tell us about the impetus behind the ESG laws?

Ms. RAMASASTRY. Great. Thank you so much, Representative Kelly. Just to be brief, ESG—environmental, social, and governance factors—have been around for some time since the 70’s and 80’s. These are just a manner in which companies can disclose how they are addressing different issues in their business operations. I am an “S” person. I deal with social rights. So when we think about human trafficking, and forced labor, and global supply chains, companies disclose kind of what steps they are taking to address those issues.

So this is nothing new. As you are saying, it has now become a hot potato issue, but I think there is a sort of misunderstanding of it. It is basically, and this is outside of any government requiring this—the companies have been asked and have been doing so from a long time—what they are doing to address environmental risks in their business operations, social risks, like forced labor and human trafficking, and kind of what they have in terms of governance to prevent things like corruption in their business.

So it is just a method of disclosure, and it is a method that companies have been doing to be responsive to a whole range of different kinds of investors. You have socially responsible investors who need this data. You have pension funds that may or may not want it. I mean, again, as we have seen, even state pension funds want to understand and make decisions based on this information. So I think the controversy is just about, well, why is any of this relevant, right? Is it going to somehow hamper profits? And that is where I think the “E” is where there has been a lot of debate. And the question is, is disclosing information about, for example, carbon emissions—CO₂—or climate mitigation something that is relevant to in decisionmaking?

Ms. KELLY. Well, let me ask you this.

Ms. RAMASASTRY. Go ahead. I am sorry.

Ms. KELLY. The financial institutions have been accused of “discriminating” against fossil fuel companies by not investing in them. And then how would you respond to accusations—

Ms. RAMASASTRY. Well, I think—

Ms. KELLY [continuing]. being discriminated against.

Ms. RAMASASTRY. I would respond in the sense that we saw the response of BlackRock to the Republican attorney general’s letter where they said this is not what we are doing, right? We are asking for that information as part of a larger set of indicators that we want to look at when we think about whether there is going to be a risk to the company, right? So they are just saying that it is part of a mix of information that will help make decisions about not only short-term profits, but long-term profits. So as BlackRock indicated, they are still investing in the fossil fuel and oil and gas sector, but they are saying that, you know, over time, they are going to need that information because there is a question about material risk. So I think the question there is that it is a piece of information that will be important.

Ms. KELLY. Are there any First Amendment implications in creating government mandates as to which publicly traded companies financial institutions can invest in?

Ms. RAMASASTRY. I think there are differences of opinion here. Now, I am not a First Amendment expert, but just in a nutshell,

there is a question about the SEC and whether it can mandate this disclosure. So some opponents are saying it is compelled speech, but I think there is a strong and plausible argument that this is nothing new, right? These disclosures help consumers understand how their companies are making decisions environmentally and that these are just about factual issues, again, that really go to materiality.

Ms. KELLY. Thank you. My time is up, but thank you so much. I yield back.

Mr. RASKIN. Ms. Kelly, the documents you wanted to introduce will be introduced without any objection, and thank you for making this really important point about the anti-ESG laws. And that is something that the subcommittee could definitely take up because that is another threat to freedom of speech and expression, and an attempt to interfere with the company's own policies trying to advocate in this field.

With that, I would like to recognize Mr. Higgins for his five minutes of questioning. Mr. Higgins, to you.

Mr. HIGGINS. Thank you, Mr. Chairman. It is striking that we are having this hearing today. A lot has been said about Louisiana, so we are going to talk about Louisiana. Generally speaking, my colleagues in the Democratic Party, it is a broad generalization admittedly, but I mean, the sky is blue, the grass is green. The Democrat Party is a party of attorneys, and the Republican Party is a party of businessmen. This is a general reference that when you first come into Congress, it is a pretty clear understanding Democrats love lawsuits. Love them.

Every energy project in Louisiana has got to set aside a large percentage of its projected budget to defend against lawsuits. Every pipeline, every LNG plant, every petrochemical expansion, every one of them have to set aside money. It is not all huge companies, you understand? You could put a small hole in the ground, it could be a \$10, \$12 million project, a small company to have to set aside, you know, million, \$2 million because of the toxic legal environment in Louisiana, because Democrats and climate activists love to sue petrochemical projects and energy projects, including LNG plants, which represent the hope of the entire world to reduce emissions. And nowhere is it done more clean than in the United States of America.

Why you got 125,000 miles of pipeline in Louisiana, young lady? Because it is Louisiana. It is where you get your energy from. It is where you get your petrochemical products from. Everything you use, everything you are wearing, your clothes, your shoes, your glasses, your phone, your iPad, the vehicle you got here in, the plane you flew here on, all of that requires petrochemical products and energy that is drawn out of Louisiana. So yes, we have pipelines. It is the safest means by which to transport energy product. It is safer than rail. It is safer than vehicle. It is safer than by water. And LNG, for God's sakes, the entire world has reduced emissions because of LNG projects out of Louisiana. But a Louisiana energy company cannot come into Louisiana without getting sued by the left. You talk about protests and First Amendment rights.

I would like for anyone here who could define for me how it is OK to vandalize equipment on a legally operating project, like a pipeline in Louisiana, and say that that is our right to go and destroy equipment, vandalize equipment. That is not protest. That is against the law, and you should be arrested for that. The young lady referred to a lack of action out of the sheriff's department. I know that sheriff's department. I know those men. They are squared away. They have to deal with this stuff all the time, climate activists causing problems. The workers or the contractors didn't go to your house or wherever you work and cause issues and interfere, threaten, and shut down, and getting away, caused safety problems. You went there and caused those problems.

I am going to ask Ms. Page. We have a witness here, Mr. Bakst, but I am going to ask you, Ms. Page. I am going to give you the balance of my time of 30 seconds. Explain to America why it is OK for climate activists to break the law and vandalize equipment on a job site. You have the floor, good lady.

Ms. PAGE. Thank you. I think we have been focused on the critical infrastructure law's chilling impact on nonviolent protests protected by the First Amendment. I would also note, again, how important is to —

Mr. HIGGINS. Is vandalizing equipment what you would call a nonviolent protest? Just tell us.

Ms. PAGE. I have just emphasized that there are laws in all states to address that kind of conduct, and —

Mr. HIGGINS. So is it OK to arrest a climate activist if they vandalize equipment?

Ms. PAGE. I think our concern would be, again, that the draconian —

Mr. HIGGINS. That is a non-answer. Mr. Chairman, my time has expired. I yield.

Mr. RASKIN. OK. Thank you for your questioning. We go now to Ms. Norton. You are recognized for your five minutes.

Ms. NORTON. Thank you very much, Mr. Chairman. I am amazed at the kinds of laws we are seeing go into effect. I must tell you, I have been a First Amendment lawyer. I can't believe these laws will stand, the 17 states that have anti-protest laws, which they disguise as critical infrastructure laws, and they are really so beyond criminalizing violent activity or other disruptive activity. They criminalize organizing. They criminalize peaceful protests. I was a First Amendment lawyer before I came to Congress and went before the Supreme Court, argued cases before the Supreme Court involving First Amendment activity. I can't believe these laws will stand.

In Oklahoma, for example, organizations and individuals can be fined up to \$1 million if they support people opposing pipeline construction as co-conspirators. We have heard from Ms. White Hat, who was arrested, where it was in Louisiana, punishable by up to five years, even beyond the property that a pipeline runs through, even if it is underground. That is why I think these laws cannot stand. As a former tenured professor of law focusing on constitutional law, that one is particularly disturbing to me.

Ms. Page, many of these laws are nearly identical in nature, and they focus on criminalizing opposition to pipeline construction. Can

you tell us why that is and how the fossil fuel industry is connected to these laws?

Ms. PAGE. Thank you, yes. So we know, at least from expressed statements in a number of cases from the sponsors of this legislation, that they are introducing these laws because of protests they have seen, either in their own states or elsewhere. So the sponsor of the Oklahoma bill for instance, became the basis of the ALEC Model law. So the protest, like the one at Standing Rock, was the “main reason” behind this bill. In South Dakota, the Governor, Kristi Noem, explicitly said that the bills she introduced were designed to cutoff funding for pipeline protesters. So we have that evidence at least of, in addition to other information, as Ms. White Hat provided, about the links between ALEC and fossil fuel companies into the design behind this legislation.

Ms. NORTON. Thank you. Professor Ramasastry, turning to you. What are the implications of fossil fuel companies championing anti-First Amendment statutes like these in state legislatures across the country?

Ms. RAMASASTRY. Again, thank you, Representative. The issue, I think, is surprisingly of consistency. What we are seeing is that these companies have made very strong public commitments to this concept of respect for human rights, including engagement and consultation, actually with civil society groups and advocates as a way of addressing issues. So this is counter to the commitments they are making, so it is a surprise to see them engaging in this in the legislatures, and I hope that this discussion will help, I think, bring that to light.

And of course companies have different kinds of people. The sustainability people aren't the government relations people. But what I would say is, again, in terms of restoring balance, I have heard that there are laws in the books to deal with criminal trespass and other issues already, and what we do need is rebalancing— that is my plea—by using I think, Federal anti-SLAPP legislation as an antidote to what we are seeing now.

Ms. NORTON. Ms. Padmanabha, Greenpeace has been investigating the connection between the fossil fuel industry and the American Legislative Exchange Council—that is called ALEC—in advancing anti-protest laws in state legislatures, and what can you tell us about the connection?

Mr. RASKIN. The gentlelady's time has expired, but please, answer the question.

Ms. PADMANABHA. OK. Yes, there is a very deep connection. As many know, ALEC is a secretive group of corporate lobbyists. Many of them have very public ties to the fossil fuel industry, and it is very clear that they have been trying to rewrite state laws to benefit corporations over people for a number of time. And so these connections are not hidden connections. They are very available to the public and very well-known at this point.

Mr. RASKIN. Thank you very much. Thank you, Ms. Norton, for your five minutes of questioning. I am going to come in just a second to Mr. Sessions for his five minutes.

First, without objection, we are going to enter into the record from BusinessInsider.com an article entitled, “Inside Louisiana's

Horrifying Cancer Alley, an 85-Mile Stretch of Pollution and Environmental Racism.”

Mr. RASKIN. And with that then, Mr. Sessions, you are recognized for your five minutes of questioning.

Mr. SESSIONS. Mr. Chairman, thank you very much, and I want to thank you, I think, for holding this hearing today because I think public discussion on both sides of this issue and issues is necessary.

I want to say to the witnesses that are here today, thank you. Thank you for taking time to be with us. I don't know that we have gotten anything other than accusations that there are two sides that are deeply, deeply at war against each other on the high seas, on land, and all across the globe. It is governments against people who produce food. It is men and women who are in a legitimate industry trying to produce energy, trying to keep us out of the cold, trying to keep us cool in the summer. It is men and women who are engaged in trying to use, as our young ranking member said, all of the above.

And I want to really thank Ms. Mace for her conversation, because it is hard to find a balance in this. It is hard to find a balance when two sides with hundreds of people on each side, perhaps thousands, are actually so committed to their side that they really cannot see the need for the other. I think it is important that we note that just as of late, we have not recognized the real impact of what a one-sided answer does, whether that be a one-sided answer on what might be called fossil fuels or all of the above, or a one-sided that might be on the other side, which may be environmentalism.

We are looking at one of the largest, literally, group of people in the world called California that is in a mature phase of over 25 years, perhaps more, of following environmental activism to do away with the balance, and now they are asking their citizens to not drive, to not use electricity, to not do these things. They have placed arbitrarily California and millions of people in a diminished position: elderly people, people in hospitals, people who are disabled, people who actually need balance in their life, and Americanism at its best.

And so I would say to the gentleman from Maryland, thank you for bringing this group together. I am not going to lecture you. That is not what this is about. But I would say that if we are going to fix the problem, we need both sides to back off from their position a little bit, to be able to see where the balance is. But political activism on someone else's pipeline or someone else's backyard is a very difficult argument, in my opinion, that several of you hold. You hold that the right of the public should have a say in these matters. I think you do. I think you do through elected officials. I think you do through policy. I think that you do in certain states that overwhelmingly have adopted those policies. But in states that actually produce the energy that have the pipelines that beat the stuffings out of driving trucks or trains up and down our freeways is a best practice, the best way for us to continue a process.

The young chairman had a hearing, perhaps last year, where we talked about pipeline safety. I attended that full hearing. I respected the words that were said by the people who came forth,

and I engaged the companies in that behavior that became apparent in that hearing. That is why we have hearings. But those companies recognize they had a problem, and they did things about it. And I think that is the activism that we need that Mr. Raskin showed. I now engage those companies on their pipeline safety. But I would say to each of you, as witnesses, thank you for bringing your story to us. But I would ask that if we are going to heal this country, it is going to take people that do produce energy. It is going to take people who have built pipelines. It is going to take consumers that cannot be put in desperate need for what they are going to get. They need the balance also.

And so I want to thank not only our ranking member, the gentlewoman from South Carolina, but I want to thank Mr. Raskin because when we hear from both sides, then we get a better understanding about the real policies that need to come. And I encourage us, and, Mr. Raskin, you know that I deeply believe in a balance, and that balance means that we can have energy and afford it.

Last, I have a Down syndrome son. I have a son that cannot take care of himself, and he is overwhelmed by changes that take place in our country, but he is an example. And millions of other disabled intellectual as well as disabled people, maybe they are veterans, that actually need to make sure that we have the air conditioning on, energy at a price that is affordable. And this means that we can throw down our sword that we have at each other and find that compromise. So please know, just because you come from a state and hold very strong views, a state that produces the energy has an obligation to do that, to take care of all of us.

Mr. Raskin, I want to thank you for the balance that is exhibited today. Ms. Mace, thank you for your leadership on this issue. And I thank each of you today. I yield back my time.

Mr. RASKIN. And thank you very much, Mr. Sessions, for those very thoughtful comments, and I will definitely have some comments elaborating on some of the things you said when it is my turn. In the meantime, I am going to recognize the very distinguished gentlelady from Massachusetts, Ms. Pressley, whose beautiful district I got to visit during the recess. Ms. Pressley, you are recognized for five minutes.

Ms. PRESSLEY. Thank you so much, Chairman Raskin. Fossil fuel companies have abused the legal system to escape accountability for their role in exacerbating the climate crisis and endangering frontline communities, which I represent in the Massachusetts 7th. And today's hearing really does underscore why we have to put an end to their attacks on environmental justice organizers and climate activists once and for all. Strategic lawsuits against public participation, known as SLAPP suits, they have been used across the country by Big Oil. For example, when several California cities sued Exxon for damages related to climate change, Exxon brought a countersuit, not in Federal court, but in a Texas state court, seeking to depose California residents for actions taken only in California. Now, this was complex and dubious lawyering to try and create a racketeering, or RICO, case against the residents and municipalities.

Professor Ramasastry, can you tell us about how this case fits into the way Big Oil companies in slack abuse works?

Ms. RAMASASTRY. Thank you, Representative Pressley. I think the larger issue, and what I tried to illustrate without getting into each individual case, is to say that there is a larger strategy here, which is not only within the United States, but global, and I appreciate what we are hearing from all members here about the issue of balance. What we are seeing is, and I would say, that one of the issues is that there are certain parts of the legal profession who have really taken up this. So it is not just about the companies, but it is also about the law firm sort of pursuing these zealous tactics where there is a clear imbalance of power, we have seen. The results are in these suits that the companies typically don't prevail, but they prevail in terms of the duration of the suits, the cost of the suits, and the inequality of resources that governments and/or civil society groups have, right? So this is the larger issue that I want to highlight.

And so again, we need to rebalance. These suits really represent that inequality of resource, and power, and rebalancing through things like anti-SLAPP legislation. I was part of the Uniform Law Commission, which is a 50-state bipartisan organization that is focused on cooperation and balance. So I come to you here today saying we do need balanced solutions, but we have a situation now of tremendous asymmetry. Thank you.

Ms. PRESSLEY. Do you mind, Professor, just expanding upon exactly what was the ultimate outcome of that litigation, and how long did it take?

Ms. RAMASASTRY. I do not know the ultimate outcome of the Exxon case that you are talking about.

Ms. PRESSLEY. OK.

Ms. RAMASASTRY. I mean, as I understand it, now it has been dismissed, and that, on appeal, that dismissal has been upheld, but the specific grounds I can't speak to.

Ms. PRESSLEY. And I think that took about four years to litigate. Thank you.

Ms. RAMASASTRY. And I would just say four, is actually relatively short compared to some of the other cases that have been mentioned in today's hearing.

Ms. PRESSLEY. And although that lawsuit did not work, it did not stop the lawyers at Exxon, you know, at all from continuing to abuse the legal system. In fact, in my home state of Massachusetts, our attorney general, Maura Healey, filed an action against the company seeking damages for sea level rise related to climate change, and in response, Exxon filed a special anti-SLAPP lawsuit against the state. So Exxon was hoping to use the very law that is designed to stop them from avoiding accountability as a mechanism to avoid accountability. Professor, are you aware of any instances where anti-SLAPP would be appropriately used against state enforcement or regulators?

Ms. RAMASASTRY. So I don't, and, again, if you look at different laws that are dealing with sort of anti-SLAPP, they have different types of application of scope. But again, I think the question of balance is that, if you see it as a counter tactic, a court has the ability to make that decision fairly quickly. So again, these laws can be used by companies as well as by civil society. But the question is, at a very early stage, a court has the ability to say this doesn't

have merit and to dismiss it if a company, again, is using this tactically as opposed to really to deal with an underlying legal issue.

Ms. PRESSLEY. But it is a consistent tactic sort of in this playbook, you know, of powerful entities like the fossil fuel industry. It is a consistent tactic.

Ms. RAMASASTRY. Consistent. I guess I would say that the larger issue is that it is part of a larger, consistent approach to using a legal system and to create a prolonged resource intensive approach to issue.

Ms. PRESSLEY. Very good. And in fact, the Massachusetts Supreme Court, after more than three years of litigation, denied Exxon's motion and is allowing the matter to proceed, so three years. So these delay tactics and judicial harassment by Exxon, by Chevron, and others really only serves their greedy interests and harm our planet. I represent one of the district's frontline communities that is disproportionately impacted by some of the highest rates in the country, so, like, justice delayed is justice denied. We cannot allow Big Oil to continue use the legal system to escape accountability. It is really all it comes down to. So thank you, and I yield.

Mr. RASKIN. Thank you very much, Ms. Pressley. I now recognize Mr. Donalds for his five minutes of questioning.

Mr. DONALDS. Thank you, Mr. Chairman. Actually, in some respects, to piggyback off the last comments by the gentlelady from Massachusetts, I think if we take a look at the legal system, what we have seen in America is that it is abused to a large degree. And I think some of the first abuses actually come from certain attorney generals that want to take energy companies into court, citing climate change and sea level rise as the reason for suit, with, you know, respectfully speaking, you know, to the members who will probably disagree with my comments, the fact that climate change is not settled science. But we are not talking about the theories of gravity or evolution here. We are talking about the amount to which man is contributing to a change in global temperatures anywhere from 1 to 2 degrees Celsius, and that science, with respecting everybody in the room, is not clear.

What is clear is that the constant move of lawsuits against energy companies does derail projects, it does raise the cost of projects, and those costs are borne by the citizens that we all serve. Look no further than the people of California right now, through a myriad of regulatory policy and, I am quite sure, lawsuits in the past in that state. Now the Governor is telling the citizens of California they can't cool their home below 78 degrees in the middle of some of the warmest time in California, you know, the month of August and September. It is pretty hot out there.

So the costs are borne by the citizenry, regardless of the politics. Regardless of where people fall on the science of anthropologic global warming, manmade climate change, whatever you want to call it, that science is not clear. I think there were earlier commentary today talking about ESG. As somebody who did work in the financial industry, I will tell you firsthand that ESG policy, those portfolios where ESG is run, have actually underperformed normal investment portfolios, and the fees associated with ESG funds are ac-

tually higher than a typical non-ESG fund. That is the data. Those are the facts. And so there are serious questions where pension plans in the various states should actually be investing in ESG portfolios if they are earning a lower return over time for the pensioners who typically are hardworking people in every state in the country.

Mr. Bakst, quick question for you. In your interpretation, what have you seen with these SLAPP lawsuits? Do you believe that it is really that we have legal games on both sides of the argument with respect to climate change?

Mr. BAKST. Thank you for the question. There is certainly going to be legal games for everybody. But it is interesting that in my testimony I was talking about one of the chilling effects of states bringing lawsuits against people for their speech and what their actions are in these companies, yet the examples being used are those lawsuits I am complaining about. In fact, when we are talking about the SLAPP, you seem to be focused on what municipalities are doing, the government is doing against these fossil fuel companies, and also see what Massachusetts is doing. So I am not really sure how that is impacting climate activists unless you want to explain that this equated municipalities in the states as a climate activists, so I don't really understand that argument.

One thing I think it is really important to understand is that there are tradeoffs. If you want to go on electricity and you want to get rid of cars, and you basically want to import all your energy like California does, it is going to have costs. It is going to have cost to Californians, and it is going to have a disproportionate impact on low-income Americans and low-income Californians who get hurt the most because they spent a greater share of their after-tax income, I mean, basic needs, like running the air conditioning. So there are tradeoffs and I think, unfortunately, we are ignoring those tradeoffs and also chilling necessary speech to be able to address these types of critical points to ensure that we protect all Americans.

Mr. DONALDS. Well, I would argue, and thank you for your comment, I think that there is a broader concern when it comes to officials and government, and let's be very clear. I mean, it is pretty apparent now with everything that has been coming out in news and in podcasts—shout out to Joe Rogan—that, you know, we have officials of government who have gone to social media companies about tamping down on information, about silencing dissent. We know firsthand, and that is not the topic of this hearing, Mr. Chairman, but we know firsthand that the White House was working with social media companies and media companies to basically silence dissent with respect to the handling of COVID-19. So if we know that the White House was clearly engaged in silencing Americans through the back door, why wouldn't we think that there are other officials in government, not just here federally, but around the country, who has silenced dissent on climate change? With that, I yield back, Mr. Chairman.

Mr. RASKIN. Thank you very much, Mr. Donalds. I am now going to recognize myself for my questioning. I didn't want to spend any time relitigating the question of whether or not climate change is real. Let me just say the scientific evidence for climate change is

unequivocal, and it demonstrates that greenhouse gas emissions have been dramatically warming the Earth's surface, and this is based on now many decades of scientific evidence. Also, California hardly needs me to defend their excellent record in rising to the occasion of dealing with climate change. But I am submitting an article for the record, headlined, "California Breaks Record by Achieving 100 Percent Renewable Energy for the First Time." A hundred percent of the energy in their state portfolios now comes from renewable energy sources.

Now, so my friend Mr. Sessions had to leave. I want to thank him for noting that we had hearings about pipeline safety, but also about the failure of a number of pipeline companies to honor their contracts and their legal obligations, to make restitution to landowners, or to restore land that had been damaged that was taken from private landowners by the eminent domain process. So we were looking at abuse of eminent domain to have the government in service of pipeline companies declare private land, the government's land, and turning it over to the pipeline companies, and it was supposed to be restored to the status quo ante and it wasn't. And that is throughout the Southwest, and the West, and the Midwest where we have seen that. That is a separate problem, but I thank him for, you know, gesturing to those hearings.

Now, as to today's matter, I am glad that my friend, Mr. Higgins, pointed out that there is violence at demonstrations. There has been violence at some of those demonstrations at the pipeline, and that is not what I am here to talk about. Anyway, I don't defend violence in any way at all, just as I am sure Mr. Higgins would not defend the violence that overran the Capitol of United States on January 6, 2021. While we defend the right of people to gather in the seat of government, the Nation's Capital, to peaceably assemble under the First Amendment and to non-violently protest and petition for redress of grievances, we do not support the right of people to come and beat our police officers over the head with Confederate battle flags, or Trump flags, or American flags, and I am sure he would not defend that.

But I just don't want to confuse the issue because what we are talking about here is First Amendment protected, nonviolent expression. And obviously every state has laws and there are Federal laws against violence, which should be enforced against anyone of any ideological stripe who thinks that the constitution or his or her own political mission gives them the right to commit violence against other people.

Now, since we are talking about defending First Amendment rights, I want to start first with you, Ms. Ramasastry, because we are talking about some different things. SLAPP suits are one. And if you could answer as cogently as possible, what are the most effective forms of anti-SLAPP statutes adopted by the states, and what are the least effective, and so what should we be looking at in Congress?

Ms. RAMASASTRY. I think the key issue here is really about a review that allows for courts to dismiss cases based on this idea can a company or whoever it is that is bringing the suit make a prima facie case that there really is some underlying substantive harm. This is what is the key. And so, again, if the underlying action that

has been complained about by the environmental group or whoever is a matter of public concern and you can define that, and I think in certain ways relating to public protest or engaging the Government, that is one key thing. So scope and then the issue of how a court can sort of quickly determine. What we really need to do is say whoever is bringing the act or SLAPP suit has to be able to demonstrate that the case really factually has merit. I mean, that is the crux of it. That is what is most effective.

Mr. RASKIN. In other words, you force them to essentially prove or at least prefigure the case right up front, rather than allowing it.

Ms. RAMASASTRY. Yes, that is right.

Mr. RASKIN. Got you.

Ms. RAMASASTRY. They have to do that right away, and that allows for that balance.

Mr. RASKIN. Thank you very much. Ms. White Hat, let me come to you. Thank you for your very vivid description of the critical infrastructure legislation and what that means. How is critical infrastructure defined in these laws? Do they define, for example, a state capitol, or school board, or the U.S. Congress voting as critical infrastructure?

Ms. White Hat. I understand critical infrastructure includes things like railroad lines, not waterways, not our water systems. I think it is like electrical lines, those kinds of things.

Mr. RASKIN. Got you. Thank you for that. And finally, I wanted to come to both Mr. Bakst, if I have got time, and also to Ms. Padmanabha. Both of you, I think, mentioned the abuse of the RICO statute, and perhaps Ms. Page, about abuse of the RICO statute to go after people who are just engaged in civic organizing. I know a lot of small businesses, even some big businesses have also complained about the way that RICO is being used as a way to go after them. Do you all think, as briefly as possible, that RICO reform is also indicated as a way to protect free expression? And perhaps we can start with you, Ms. Padmanabha.

Ms. PADMANABHA. Thank you, Chairman Raskin, for your question. Absolutely. I think that there needs to be some sort of overhaul of how RICO can be used. I will say that in the case of Greenpeace, while we thought a lot of groups came together because they felt that RICO was going to be used as the new tool against organizing and we fought these suits head on, we were able to get RICO thrown out of both of our Federal cases. And we haven't seen any new Federal RICO cases filed because we actually have good law. That doesn't say that this tactic won't reappear, but I think that both in the courts and in the legislature, RICO does need to be addressed.

Mr. RASKIN. OK. Mr. Bakst, what do you think about it?

Mr. BAKST. Yes, real briefly. I don't want to claim to be a RICO expert, but to the extent that the Department of Justice is using RICO to try to censor protected speech, then, yes, there needs to be reforms of speech, not necessarily actions.

Mr. RASKIN. Thank you, and, Ms. Page?

Ms. PAGE. I am not well-placed to discuss Federal RICO. We have been focused on state law, use of state RICO charges and conspiracy charges against protest-related activities.

Mr. RASKIN. OK. My time is overdue. Thank you very much. Mr. Biggs, you are recognized for your five minutes.

Mr. BIGGS. Thank you, Mr. Chairman. Mr. Bakst, you wrote that when it comes to energy and environmental issues, that chilling speech is too often the reality. Expand on that, please.

Mr. BAKST. I mean, even in kind of civil discourse, people are called climate deniers with a clear kind of connection to the Holocaust, but I think that is inappropriate. It is inappropriate to call for people to be put into jail because they hold views that are different than your own. That seems to, quite honestly, cross the line. It is inappropriate for the Federal Government to try to go after companies for their views or individuals for their views. It has just gotten way out of hand, and it is hard to have any type of really any discourse on issues when you are scared to death.

And quite honestly, the other thing I included in the written testimony is that there are scientists and people who want to do research on some of these important issues. They just won't do it because they don't want to commit career suicide. To me, that hurts everybody, not just those people and those careers and academics, but policymakers who are trying to have good information to make informed decisions.

Mr. BIGGS. You said Federal legislators have urged the Department of Justice to prosecute climate skeptics, including under RICO, and that certain states are getting creative to try and prosecute conventional fuel companies. Please expand on that, and if you can, identify any of these Federal legislators who have urged climate skeptics to be prosecuted under RICO.

Mr. BAKST. Yes, I cited that in the testimony. I believe it was Senator Whitehouse who was involved in that, and there might have been some other representatives in the House as well. The lawsuits that have actually been talked about in this SLAPP context are some of the lawsuits that I am talking about as it relates to the states, so, like, Massachusetts going after fossil fuel companies, or New York, or whatever states or municipalities, for that matter.

So it is kind of ironic that the things I am complaining about are actually examples of the strategic lawsuit against public participation that they are using. To me, when the government is going after you and you are a private citizen, using the existing law that is on the books to protect your right for speech, it just doesn't seem like that is an abuse on the part of these companies.

Mr. BIGGS. So one of the founders of Greenpeace, Dr. Patrick Moore, in an article where he describes why he left Greenpeace, noted that his former colleagues ignored science and supported specifically speaking of the chlorine ban, then forcing his departure because, despite science concluding that there were no known health risks and ample benefits from chlorine in drinking water, Greenpeace and other environmental groups have continued to oppose the use of chlorine for more than 20 years. So when we see the chill that becomes almost the anti-scientific censorship that you are referring to, what does that do for the overall health of human beings and the advancement of science to protect the environment and our communities?

Mr. BAKST. Well, it hurts it, and what is really concerning is that the administrators of the state and regulators who are actually making the policies that impact all Americans are using junk science. And there is no transparency as it relates the science is being used, so the American people and outside experts are not able to evaluate the studies that are being used by Federal officials to make decisions. And instead, what happens is their efforts to basically reach a policy outcome and they cherry pick studies ultimately to kind of get to that policy outcome. That doesn't do anybody a good service, regardless of what you have on the issue.

Mr. BIGGS. So, you know, I can't help as I read this, and I read your remarks and some of the other remarks, and having watched this for some time, I can't help but think of Thomas Kuhn and his discussion of paradigm shifts. With science, the new theory which will become orthodox is always at some points heterodox to the rest of the scientific system. And when you basically attack any scientist, who may be looking at something or questioning, that is really what science is all about, whether it is social science or any of the hard sciences. And the reality is, how does this censorship, this attack on those who may be heterodox today which actually may become orthodox tomorrow, how does it prevent advancement in science?

Mr. BAKST. Well, the scientists are never going to challenge the alleged conventional wisdom. They are scared to death from doing so. The academic researchers has all kinds of problems with peer review processes, academics not being able to replicate studies, people not wanting to kind of reach to do certain research that will in any way jeopardize their career. The government relies on junk science, and then it just kind of continues, becomes the conventional wisdom over and over, and there is never going to be a challenge of it, and policy that is informed by that science ultimately continues. And what we need to have is kind of an ongoing regular system in place so that we can challenge the major studies and science that is informing the policy decisions made by agencies so they are always able to challenge that conventional wisdom.

Mr. BIGGS. Mr. Chairman, I just have one last quick question. I apologize.

Mr. RASKIN. Please.

Mr. BIGGS. But it gets to actually even the notion of where Federal grants go to study, what items are going to be studied, because now I will just summarize them and you can agree or disagree, because it seems to me that we churn, we keep sending new grant money to basically reinvent the wheel, not reinvent the wheel, to actually buttress whatever the foundational science that is there instead of actually advancing the science and moving forward, because if you never move to a heterodox position and allow heterodoxy to actually go forward and actually challenge the orthodoxy, no matter how outlandish it may seem, you will never change to another advanced. Would you just comment on that?

Mr. BAKST. I agree with that point. And I think one of the things that needs to be evaluated is just take a look at probably how little science or any research dollars are going to challenge this kind of conventional wisdom. Very little, if any.

Mr. RASKIN. Thank you very much. The gentleman's time has expired. Thank you. And, Ms. Wasserman Schultz, you are recognized for your five minutes of questioning.

Ms. SCHULTZ. Thank you so much, Mr. Chairman, and I appreciate the opportunity to have this important discussion because the fossil fuel industry has a long history of spreading disinformation both about climate change and the industry's overwhelming culpability related to climate change.

In 2019, this subcommittee held a hearing which addressed the oil industry's climate change denial campaign that dates back to the 1970's. While fossil fuel companies have now largely acknowledged the existence of climate change, their disinformation tactics have evolved to include greenwashing and new ways of silencing dissenters. Ms. Padmanabha, can you tell us briefly about some of the greenwashing tactics that the fossil fuel industry uses?

Ms. PADMANABHA. Sure. So the fossil fuel industry, as we have discussed, has been attempting to control the narrative, not only through the silencing of dissent, but also trying to flip the switch on whose speech is being attacked. And so when it comes to misleading consumers about the impacts of climate change and everything that is coming out now about how long fossil fuel companies have been aware of their business practices on climate change, there is all of a sudden this attempt to flip the switch and try to regain control of the narrative to, for example, in Massachusetts filed as anti-SLAPP motion, saying we are the victims here. All of these are free speeches under attack. We see this in different lawsuits that are being brought about greenwashing, about the misleading of consumers to ultimately capitalize on profit.

And so what is very different about the fossil fuel industry and movements in terms of the discussion on free speech, is that at issue for the fossil fuel companies is there is an actual profit. There is an actual commercial interest. The attacks on movements are about building a movement, educating the public, organizing, and so these are very, very different issues that I think the fossil fuel companies are trying to combine.

Ms. SCHULTZ. Thank you. Really, SLAPPs and anti-protest laws are new forms, as you are mentioning, of dis-and misinformation that are spun by the fossil fuel industry. By preventing opposing views from being heard, the fossil fuel industry is making sure that their narrative dominates above all others. Again, Ms. Padmanabha, how do SLAPPs affect environmental activists' willingness to speak out against the fossil fuel industry?

Ms. PADMANABHA. They have a tremendous impact. I mean, you know, any of us can imagine one day waking up and having a \$300 million lawsuit served on us. I mean, what would that do? And the thing that is so problematic about SLAPPs, it is the mere filing of the suit that creates the chilling effect, and I think that that is what we really need to keep in mind, because in our case, for example, our first SLAPP was filed in 2016. We are still fighting this. I mean, the costs, even though, ultimately, whether truth is proven to get to the point of actually proving the truth that your free speech, is being attacked. If there is no anti-SLAPP statute, you have to undergo years and potentially millions of dollars of litiga-

tion, and I think an important point is that most SLAPPs are not filed against big organizations.

Ms. SCHULTZ. Right.

Ms. PADMANABHA. They are filed against individuals, who are trying to protect their water, protect their land from developers. That is the history of the SLAPP suit. And so those stories don't get the attention because the mere filing of the suit when they think about having to put food on the table, it silences them. They need to think about the ability to survive.

Ms. SCHULTZ. Thank you. Another predatory tactic is to deploy so-called critical infrastructure laws to ratchet up criminal penalties and fines against protesters. So these are post 9/11 statutes that purport to protect all of our vital resources, like food, and water, and communications, but these are often vaguely drafted laws, basically, that shields fossil fuel companies from environmental protests. For example, in Texas, prosecutors are trying to charge Greenpeace protesters with felonies for disrupting a bridge over an oil shipping channel, but without this critical infrastructure law, these would just have been misdemeanors.

So Ms. Page, I am going to ask both these questions. Mr. Chairman, if I could have the indulgence of them both answering. Ms. Page, how do anti-protest laws disguised as critical infrastructure laws affect the same willingness to speak out? And Ms. White Hat, how have these laws in Louisiana changed your approach to activism?

Ms. PAGE. Thank you, Representative. Absolutely, these laws can have a dramatic chilling effect on people's willingness to speak out: their combination of extreme penalties as you said, felony penalties in many cases, often with many years of prison as a potential punishment, and then these vaguely drafted criminal offenses that can cover constitutionally protected speech. I mean, I think about the woman, and I believe she was a member of the White Earth Nation, who was demonstrating against construction of new pipelines. She was near the construction site, but not purposefully on pipeline property, and she saw a rare plant that she just read about and walked over to get a closer look. And it turns out just those few steps took her over the property line, and now she faces thousands of dollars in fines and potential jail time.

So you think about what it says to the average citizen who sees these laws, these draconian penalties, how sweeping the laws are, and imagine the impact that has when you are thinking about whether or not to exercise your First Amendment Rights, knowing that you can be caught up in those kinds of penalties, even if you are trying to stay within the bounds of the law.

Ms. SCHULTZ. Thank you. Ms. White Hat? Mr. Chairman, if you wouldn't mind allowing Ms. White Hat.

Mr. RASKIN. Please.

Ms. SCHULTZ. Thank you.

Ms. White Hat. Thank you. In terms of how it affected my activism, it was very stressful to have those charges hanging over my head for three years, and it counts, like, every day, wondering if they are going to come knocking on the door to take me to jail and having to make plans for my children, et cetera. But in terms of just being out there and going out, it really has a chilling effect on

us as frontline organizers, not just for us to be able to have to go and do the work that we do. It also impacts other First Amendment rights, like freedom of religion. One of the gentlemen involved in our lawsuit was denied the right to travel, to go to practice his religious activities. So it is not just that it calls our activism, but it also hurts other parts of our First Amendment Rights as well.

Ms. SCHULTZ. Thank you so much, Mr. Chairman for your indulgence.

Mr. RASKIN. And thank you Ms. Wasserman Schultz for your questioning. I now get to recognize the ranking member, Ms. Mace, for her questioning.

Ms. MACE. Thank you, Mr. Chairman, and I thank our witnesses again today for being here, and for your time and effort to talk about censorship in the First Amendment. I love the Constitution just as much as our chairman, and one of the questions I had of all the panelists this morning, the first and second question, “yes” or “no.”

[Chart]

Ms. MACE. As you can see behind me, there is a group of demonstrators gathered together in support of climate initiatives during the People’s Climate March rally in D.C. Starting with the professor who is here this morning, is this considered protected free speech, yes or no?

Ms. RAMASASTRY. Oh, first of all, I can’t really see the photo, but, again—

Ms. MACE. It’s peaceful protestors at the Climate, yes, here in D.C.

Ms. RAMASASTRY. So again, lots of caveats and assumptions. I would say, again, if people are demonstrating in a way that is peaceful, peaceful assembly, that should be protected.

Ms. MACE. And, Ms. Padmanabha, “yes” or “no.” Is this protected free speech behind me?

Ms. PADMANABHA. Yes, it is.

Ms. MACE. And Mr. Bakst?

Mr. BAKST. Yes, looks peaceful.

Ms. MACE. Ms. Page?

Ms. PAGE. Yes, it appears to be.

Ms. MACE. Ms. White Hat?

Ms. WHITE HAT. It appears peaceful.

[Chart]

Ms. MACE. And then the second one, the example I wanted to share is an image from the Dakota Access Pipeline construction site of a person who is pouring gasoline on a pile of tires to block a roadway and prevent law enforcement by protecting pipeline employees from doing their job on privately owned property. I would like to start with the professor. “Yes” or “no,” is this an image of protected free speech?

Ms. RAMASASTRY. Again, caveats. I am not seeing the full picture, so I would say based on your description, likely not.

Ms. MACE. And Ms. Padmanabha?

Ms. PADMANABHA. I am not here to comment on the actions of individuals.

Ms. MACE. So you don’t know. OK. Mr. Bakst?

Mr. BAKST. No, that is not protected speech.

Ms. MACE. And Ms. Page?

Ms. PAGE. I don't know without more information. I would say that if it is violent, unlawful conduct, that is not protected by the First Amendment.

Ms. MACE. Ms. White Hat?

Ms. WHITE HAT. I decline to answer on the basis of the First Amendment Right of association for myself and others. Thank you.

Ms. MACE. So this picture of the Dakota Access protesters, they set fires, they lobbed Molotov cocktails, they fired shots to face off with police, and they were trespassing in this particular example. And, Mr. Chairman, I would like to ask unanimous consent to enter into the record this article by The Washington Times about this particular, what some would call protests, but clearly a violation of constitutional rights.

Mr. RASKIN. Without any objection.

Ms. MACE. And then my third question for the panelists, everybody, and I will start with professor again today here this morning. Is it just the right trying to silence the speech of the left, or does the left also try to silence the speech of the right? Is it just one-sided or is this an issue that can be seen as two-sided, both sides doing it?

Ms. RAMASASTRY. Yes, my remarks were about that, right? I kept speaking about balance and the fact that the new anti-SLAPP laws we have at the state level, which I helped lead, were about balance and had tremendous bipartisan support.

Ms. MACE. And do you see it on both sides, Ms. Padmanabha, where both sides are trying to silence or center the speech of others?

Ms. PADMANABHA. On a theoretical or academic point of view, I do. But in reality, it is really the deep pockets who are doing the silencing and those deep pockets tend to fall on the side of the fossil fuel industry and their allies.

Ms. MACE. And Mr. Bakst?

Mr. BAKST. Look, I think the LNG environmental climate area, it does tend to be on the left, silencing conservatives more, but there is no question there. There might be abuse of existing state statutes, so I want to make some of these one-sided. But examples I have heard today, especially as it relates to actions being taken, that don't deserve to be protected speech are not examples of conservative silencing speech.

Ms. MACE. And Ms. Page?

Ms. PAGE. So at least for the critical infrastructure and other anti-protest laws that I was invited to speak about, I can say that we have seen them introduced and approved with very few if any exceptions by conservative lawmakers.

Ms. MACE. Ms. White Hat?

Ms. WHITE HAT. Thank you. In our experience, the critical infrastructure law amendments that were passed in Louisiana were directly aimed at silencing our movement.

Ms. MACE. Thank you. And then Mr. Bakst, if I have time one more minute, a couple of questions? So how does the left silence opposing views on climate and energy policies that they do disagree with. My first question.

Mr. BAKST. Yes, I think we have been able to capture a lot of that just making it, trying to literally make it a crime, throw people in jail, have to force the government actually doing that, and that is pretty chilling. Not allowing research to flow to different perspectives, career scientists or academics being scared to death to actually even engage in certain researching and certain speech, I think those are some. And also, certainly the Biden Administration and these reports of trying to use social media companies or any third party to try to act as the agent of the government to censor speech. That to me is a violation of First Amendment, at least as it is being reported.

Ms. MACE. We agree. Thank you, Mr. Chairman. I yield back.

Mr. RASKIN. All right. Well, thank you very much, Ms. Mace. I want to thank all of the witnesses for your excellent testimony today on this really important subject. I want to thank all the members for their participation.

I also want to request the following documents be introduced into the record that were offered by Ms. White Hat, the Third Circuit ruling in *Bayou Bridge Pipeline v. 30.00 Acres*, excerpts from deputy depositions, transcript of Louisiana Senate hearings, ALEC attacks report, Louisiana pipeline map, and six photos of arrests, including violence and a demonstrator's sign. All of these, without objection will be entered into the record.

Mr. RASKIN. And let's see. Members will have five legislative days within which to submit any additional written questions for our five distinguished witnesses today to the chair, and I will forward them to the witnesses for their response. And please, witnesses respond as quickly as you are able so we can complete the record to this hearing.

Mr. RASKIN. Again, thank you for your excellent and instructive testimony that will help us develop some legislative ideas going forward.

[Whereupon, at 11:52 a.m., the subcommittee was adjourned.]

