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PIPELINES

Judge bars 'riot boosting' law aimed at Keystone XL protests

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South Dakota must halt enforcement of a "riot boosting" law the state passed earlier this year, a federal court ruled yesterday.

The law targets those providing aid to demonstrators who become violent, and was enacted after high-profile protests over the Keystone XL pipeline in neighboring North Dakota.

The legislation passed earlier this year in anticipation of a similar response to expansion of the pipeline into South Dakota ([Energywire](#), April 24). It drew sharp criticism for wording that criminalized advising, encouraging or soliciting certain protests. Plaintiffs in the case said such broad language would make individuals who gave directions to a protest, donated to a cause or offered food to protesters liable if a peaceful protest ever became violent.

The U.S. District Court for the District of South Dakota, Western Division, issued an injunction preventing the enforcement of the rule yesterday afternoon as the legal challenge to the law continued.

Judge Lawrence Piersol slammed the law in his decision, pointing to three specific actions outlined in the statute as violating constitutional protections.

"The many words or expressive activities that arise within these three terms, to advise, encourage or solicit, might in some instances be offensive to some or to many people, but they are protected by the First Amendment and cannot be subject to felony prosecution or of tort liability and damages," Piersol, a Clinton appointee, wrote in his decision. "Felony or tort liability for one who advises, encourages or solicits is overboard."

He noted that having the law in place while litigation over it is ongoing could hinder the ability of protesters to speak out against TC Energy's Keystone XL project.

Stephen Pevar, senior staff counsel with the racial justice program of the American Civil Liberties Union, lauded the [injunction](#). The ACLU is leading litigation against the South Dakota law, the express purpose of which was to stifle dissent, he said.

"The judge's decision is consistent with more than 50 years of court rulings on free speech. There is nothing unreasonable or out of the ordinary — we would have been shocked if we lost because these statutes are so clearly unconstitutional," Pevar said.

He added that the judge also found another statute, which awarded damages to the pipeline company itself, to be unconstitutional.

Pevar pointed out that lawmakers concerned about peaceful protests becoming violent already have laws on the books to prosecute riots.

"I'm feeling pretty good," said Dallas Goldtooth, a Keep It in the Ground campaign organizer with the Indigenous Environmental Network and a plaintiff in the case.

"There's a lot about this that seems obvious; it's absurd that the state of South Dakota would actually be considering punishing someone for using First Amendment rights for someone they have no relationship with," he said.

He noted that in the run-up to the law's passage, the governor of South Dakota had said the legislation was aimed at preventing outside forces from trying to disrupt a peaceful process, but after the legislation passed, it "was about protecting South Dakota."

"I see this honestly as a veiled attempt to suppress the ability for the native peoples of South Dakota to speak up and organize around issues that matter to them," Goldtooth said.

A spokesperson for South Dakota Gov. Kristi Noem (R) said in an email that the governor and her team were reviewing the ruling.

"Since the matter remains in litigation, she won't be making further public comments on the matter at this time," said Kristin Wileman, the governor's press secretary.

John Harter, chairman of the board at conservationist group Dakota Rural Action, a plaintiff in the case, said the Keystone XL pipeline, "if constructed, would have a substantial impact on all of our lives."

"Our opposition to the pipeline construction may agitate Gov. Noem, but the First Amendment guarantees us the right to make our voices heard, and we're thrilled that the state is blocked from enforcing the anti-protest laws as the case goes forward."