

June 3, 2020

Governor John Bel Edwards
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Dear Governor Edwards,

As Louisiana-based organizations committed to protecting civil liberties and advancing racial justice, we respectfully urge you to veto HB 197. The bill would have an unacceptable chilling effect on free speech by requiring outrageously harsh new prison sentences for a person's **mere presence** at a critical infrastructure facility. This chilling effect would directly and immediately burden the political speech of predominantly Black residents in southeastern Louisiana, who have urgent free-speech interests in objecting to the environmental and public health impact of pollution from oil refineries, pipelines, and petrochemical plants near their homes. The bill is also unnecessary, because Louisiana law already provides for criminal penalties for trespassing on or damaging critical infrastructure.

The First Amendment stands for the principle that when society is faced with difficult political challenges and discord, the solution is more speech, not less. Allowing HB 197 to take effect would discourage peaceful speech and assembly, especially by Black Louisianans. Worse still, this stifling of civic engagement would come as a result of a legislative process in which the COVID-19 pandemic drastically restricted public participation.

On its face, HB 197 would simply heighten criminal penalties for unauthorized entry of a critical infrastructure during a state of emergency. The bill proposes a mandatory sentence at hard labor from 3 to 15 years and a potential fine of up to \$5,000.

However, the policy justification for this penalty enhancement is dubious. Current law already provides a serious deterrent for any violent or destructive conduct—if a person causes damage while trespassing, the law provides a penalty of hard labor up to 20 years, a fine of up to \$25,000, or both.¹ In other situations, when a person causes no damage, current law gives judges discretion to weigh the circumstances. A person who trespasses on critical infrastructure but causes no harm may be sentenced up to 5 years in prison, fined up to \$1,000, or both.²

Thus, HB 197 would create no new deterrent to causing damage to critical infrastructure. Mandatory minimums are not themselves deterrent; vigorous sociological evidence shows that people who commit

¹ La. R.S. § 14.61.1.

² La. R.S. § 14.61.

crimes are generally unaware of mandatory minimum sentences at the time of commission, and mandatory minimums do not reduce recidivism. Instead, mandatory minimum sentences tend to overburden the legal system and force defendants to endure prolonged incarceration for relatively minor offenses.

Nevertheless, even if the intent is to deter damage to critical infrastructure, the bill aims at a different target. The penalty enhancement would exclusively cover physical presence *without* causing damage. The real deterrent effect would burden speech and assembly, not violent or destructive conduct.

As a matter of public policy, this critique would apply in any jurisdiction. But in Louisiana the chilling effect on free speech would disproportionately burden Black people. Black residents in southeastern Louisiana have expressed urgent concerns about carcinogenic pollution along the I-10 corridor and its impact on their communities' health. Those concerns are well-founded—according to the Environmental Protection Agency, the region has the highest rate of air-pollution-caused cancer in the nation, some areas having rates 50 times the national average.³ Residents have long objected to the proliferation of new facilities and pipelines in the region. Recently, public health concerns in St. James Parish have been compounded by the potential desecration of burial sites of enslaved people at the proposed site of a petrochemical plant.⁴

COVID-19's brutal and disparate impact on Louisiana's Black population, especially in this region, has laid bare the health threats that these residents face. Black people have accounted for 54 percent of COVID-19 deaths in Louisiana, while making up only 32 percent of the population.⁵ People whose lungs, immune systems, and hearts have been weakened by air pollution are at high risk for serious or fatal COVID-19 cases. Respiratory and cardiovascular conditions that are caused or aggravated by air pollution, such as asthma, chronic obstructive pulmonary disease, heart disease, hypertension, and diabetes, are disproportionately common in predominantly Black communities along the southern Mississippi River. Since the COVID-19 pandemic has taken hold in Louisiana, St. John the Baptist Parish and St. James Parish have had among the highest per-capita death rates in the United States.

The people of Louisiana have a fundamental right to speak and assemble in opposition to the serious environmental health risks they face. HB 197 threatens to silence them under threat of arrest and imprisonment.

Unfortunately, the COVID-19 pandemic has also drastically restricted public access to this year's legislative process.⁶ The people whose free speech and assembly would be most affected by HB 197 are the people whose health and safety could be most imperiled by congregating at the Capitol during

³ U.S. Environmental Protection Agency, *2011 National Air Toxics Assessment* (2015).

⁴ Alexander C. Kaufman, "Louisiana bill would mandate 3-year minimum sentence for trespassing on fossil fuel sites." *Huffington Post*. May 29, 2020, https://www.huffpost.com/entry/louisiana-bill-fossil-fuel-protests-slave-cemetery_n_5ed197d8c5b6eb7566d758d9

⁵ Louisiana Department of Health, Coronavirus (COVID-19) Information, <http://ldh.la.gov/Coronavirus/>.

⁶ See, e.g., Mark Ballard, "Political Horizons: Social distancing legislation session tamps down public input." *The Advocate*. May 23, 2020, https://www.theadvocate.com/baton_rouge/opinion/mark_ballard/article_ee15b95c-9c53-11ea-a830-37422ba165a9.html.

the pandemic. It is outrageous that a law silencing the political speech of Black Louisianans could result from a legislative process in which they could not participate.

All Louisianans have a fundamental right to speak and assemble freely. For Black Louisianans and others whose health is endangered by carcinogenic pollutants, the right to free speech and protest is a matter of life and death. Even though COVID-19 has restricted civic engagement during the legislative session, you, as governor, have the sole power to prevent this further suppression of speech and dissent. Please veto HB 197.

Respectfully,

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Vice President
350 New Orleans

Logan Atkinson Burke
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Alliance for Affordable Energy

Tish Taylor
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Rev. Gregory T. Manning
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