Tennessee law seeks to criminalize protests on public property

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14 September 2020

In late August, following weeks of protests in Nashville, the state capital, Tennessee's Republican governor, Bill Lee, signed a law making camping on state property a felony crime with a penalty of six years in prison and an accompanying loss of the right to vote. Tennessee joined a dozen other states whose legislatures are attempting to intimidate organizers and demonstrators participating in protests against police violence.

House Bill 8005 passed almost exclusively on a party-line vote, 26-5 in the Senate and 71-20 in the House. Anyone convicted of a felony is automatically stripped of voting rights in Tennessee. A lengthy process is involved to have voting rights restored after serving even a one year prison sentence. Also included in the new law is a requirement that if arrested, a demonstrator must be held for 12 hours before being released.

Republican House Majority Leader William Lamberth said the aim of the bill was to crack down on "criminal elements" and protect law enforcement officers. "It is to prevent what has happened in other cities like Portland and Washington, DC," said Republican Lt. Gov. Randy McNally of the measure.

Underscoring the law's authoritarian character, McNally stated that it would punish "people [who] knowingly violate the law, knowingly thumb their nose at authority and don't do what authorities have requested they do."

Protesters remained on state property after demonstrations began in June against police violence and in support of efforts to have the bust of Confederate General Nathan Bedford Forrest removed from the state Capitol. As in many other cities, the demonstrations have been largely peaceful.

"The ACLU of Tennessee opposes this legislation because it chills free speech, undermines criminal justice reform, and fails to address the issues of racial justice and police violence raised by the protesters currently outside the State Capitol," Hedy Weinberg, executive director of the Tennessee American Civil Liberties Union, wrote in a letter to Governor Lee before the bill was passed. Lee ignored her.

While some forces around the Democratic Party have taken to denouncing the bill on racial grounds, stating its intent is to deprive African American protesters in particular of civil liberties, it is an obvious fact that the multitude of protests against police brutality, Confederate monuments and other symbols of oppression are multiracial.

Tennessee's lawmakers and the state's multi-millionaire governor have revealed their deeply reactionary character on several fronts, this latest law being only one. The legislature has blocked efforts to vote by mail despite the fear expressed by many Tennesseans of the risk of COVID-19 infection from in-person voting. It is a felony to even distribute forms to request a mail-in absentee ballot.

Similar anti-democratic measures are being pushed in other states. A Michigan bill's author, state Representative Lynn Afendoulis, said "riot" sentencing laws were too light and told ABC News that protesters were "outside agitators."

"A ten-year felony, for many, is going to be a slap on the wrist," Afendoulis said. "Especially when they come here with the intent of hurting people and hurting property, and, again, terrorizing a community."

A federal bill introduced last month would allow the US attorney general to withhold 10 percent of federal funding from state prosecutors, district attorneys and state attorneys general for failing to prosecute "crimes" at public demonstrations.

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Responding to Oklahoma protesters charged under new state terrorism laws that include life imprisonment as a penalty, American Civil Liberties Union of Oklahoma staff attorney Megan Lambert told the Intercept that the implications were horrifying.

"Many of these charged protesters are young teenagers," she said. "So they are facing spending their entire lives in prison simply for, in some cases, attending a protest to try and hold police accountable."

The US Protest Law Tracker produced by the International Center for Not-for-Profit Law (ICNL) follows efforts on a state and federal level since 2016 to "restrict the right to peaceful assembly." According to the tracker, 40 states have considered 133 such bills. Although 87 proposed laws were defeated or expired, 25 were enacted and an additional two were passed with undefined "improvements."

The Tennessee law and draconian laws like it give the police and prosecutors new and brutal tools to repress peaceful protests by declaring them "riots." Even a suspended sentence would force an activist to halt political activity or face re-arrest and immediate incarceration to serve prison time for the previous charge.

The new law also encourages the common police practice of infiltrating political groups and demonstrations. It is well documented that police spies or their agents encourage unwitting activists to break laws, setting them up for arrest. "It is a historical fact … that law enforcement frequently infiltrates progressive political movements using agent provocateurs who urge others to engage in violence," states a June article in the Intercept.

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