PROTEST IS THE VOICE OF THE PEOPLE.

It’s a powerful tool to force confrontation and shake up the status quo. From writing letters to protesting in the streets, from occupations to boycotts, our democracy demands that people have the freedom to exercise their constitutional rights, to hit the streets and speak loud. But all too often, police meet protests with violence, and prosecutors punish activists. Over the past decade, we’ve faced a new wave of state and national legislation that seeks to criminalize protest.

In this quarterly publication, we examine the policies and practices that threaten First Amendment rights. We’ll also uplift the fights taking place in courtrooms, capitols, and on the street to defend the right to protest.

PROTEST UNDER FIRE

As we go to print, war is raging in Gaza, leading to widespread protests in the U.S. Activists calling for a ceasefire and end to the occupation have engaged in widespread civil disobedience, including getting arrested and conducting sit-ins in the offices of state and federal elected officials, train stations, and other public spaces. We are monitoring the police response, which thus far at least, has not included deployment of less lethal weapons or other violent crowd control tactics.

But politicians and right wing groups are demonizing pro-Palestine protesters – particularly those on campus – attempting to paint them as terrorists. In Florida and Virginia, elected officials are accusing groups of ‘material support for terrorism.’ This unfounded charge is disingenuously and maliciously echoed in a letter to hundreds of college presidents from the Anti-Defamation League and Brandeis Center.

We’re pushing back against this dangerous narrative, and will continue to do so.
"THESE COPS WERE CLEARLY KEYED UP AND READY TO GO TO WAR."

“They were living out their fantasy of getting to put on tactical gear and act like they were in a situation of war, when they were actually going up against people with no armor and no weapons who weren’t doing anything wrong.”

[Attorney Andrew McNulty, Westword, 1/27/22]

We conducted open source analysis of over 90 court decisions and settlements paid out to injured protesters to gain a clearer understanding of the actions of police and protesters during the summer of 2020. We found that, while some protesters might have thrown bottles at police or vandalized property, often, it was the police who engaged in unlawful violence. The lawsuits showed that cops dressed in riot gear with bullet proof-vests, shields, and helmets, armed with lethal and less-lethal weapons fired wantonly on unarmed civilians, sometimes at close range, leading to serious injuries. People were arrested without justification, journalists were targeted, and rights were trampled.
CITIES PAY OUT BIG FOR POLICE MISCONDUCT, CONT.

PEOPLE WHO PRESENTED NO THREAT WERE ARRESTED AND BRUTALIZED

Police used brutal force against protesters, often charging them with resisting arrest or other crimes. Police cited these charges to promote a narrative that protesters were dangerous and violent. But after reviewing video evidence and eyewitness accounts, those stories were repeatedly debunked.

In Minneapolis, Jaleel Stallings was en route to a vigil with some friends on the evening of May 30, 2020, when shots were fired at them. Stallings was hit in the chest and fired back. As soon as he realized the shooters were police, he threw his gun down, put up his hands, and lay motionless on the ground. Police swarmed him and beat and kicked him for 30 seconds. He was charged with 8 felonies, including attempting to murder two police officers and resisting arrest. A video of the incident showed the initial police attack on Stallings was unprovoked, and his response was reasonable. He was found not-guilty of any charges. The city agreed to pay Stallings $1.5 million to settle a civil lawsuit. (As reported by Minnesota Public Radio.)

Police in Milwaukee used excessive force and falsely arrested Cameron Murdoch on June 2, 2020. He's been awarded $270,000 to settle his civil rights suit. Police kicked Hannah Silbaugh as she participated in a sit-in in Erie, PA on May 31, 2020. She was awarded $45,000. These are just a few of the many cases where police used unnecessary force against protesters.

A FEW KEY TAKEAWAYS:

- Over 2,500 protesters, journalists, bystanders, and legal observers joined the lawsuits, which ranged from individual to class actions representing hundreds of people.
- Over $130 million was awarded to protesters who were maimed, brutalized, wrongfully arrested.
- In most cases, cities settled lawsuits out of court, preventing public testimony and potentially higher awards to injured and falsely arrested.

INDISCRIMINATE USE OF LESS LETHAL WEAPONS WAS Egregious, RESULTING IN HUNDREDS OF INJURIES

Projectile weapons have soft names: bean bag rounds, rubber bullets, foam tipped projectiles. But they aren't soft. They can maim, disfigure, and cause permanent debilitating injuries. Police justified their use as a means to control violent protesters. But the lawsuits tell a different story. In city after city where these weapons were used, it became evident that their use was indiscriminate, harming people who were no threat.
THE HUMAN TOLL OF THESE WEAPONS IS BEYOND DISPUTE.

Here are a few examples we found:

• **Cleveland, OH:** A beanbag round fired by Cleveland police left John Sanders blind in his left eye. Awarded $1.5 million.

• **La Mesa, CA:** Leslie Furcron was hit in the head with a beanbag round, and “ended up in the ICU, in a medically induced coma and lost vision in one eye.” Awarded $10 million.

• **Santa Rosa, CA:** “Marqus Martinez suffered a split upper lip, shattered front teeth, and broken facial bones” after being hit with a sting ball grenade. Awarded $1.9 million.

• **Austin, TX:** Justin Howell was shot in the face with a beanbag round and suffered traumatic brain injury. Awarded $8 million.

• **Austin, TX:** Christen Warkoczewski, hit in the face by a bean bag, fracturing her jaw and leaving her disfigured. Awarded $850,000.

• **Denver, CO:** Gabriel Schlough, got his chin shot off by a rubber bullet. Awarded $575,000.

HUNDREDS OF PROTESTERS WERE ‘KETTLED’ AND FALSELY ARRESTED AT LARGE DEMONSTRATIONS, COSTING CITIES MILLIONS

Kettling is a tactic wherein police surround and trap a group of people at a protest (who may be protesters, bystanders, journalists, or legal observers), and arrest them without justification. Often the arrests are accompanied by unnecessary force.

On June 4th, New York City Police (NYPD) officers “kettled” 320 protesters. They were “restrained with zip ties, battered with batons and hit with pepper spray” according to ABC News, and falsely arrested. Each person arrested will receive $21,500 as a result of a class action lawsuit totalling $7 million.

Police used tear gas and flash bang grenades to trap hundreds of protesters in downtown Charlotte, NC on June 2, 2020, setting up an extraordinarily dangerous situation. As protesters were trapped below, police started firing pepper balls at them from a parking garage.

The police intended chaos. According to the Charlotte Observer, a bodycam worn by Sgt. Scott Sherwood caught his enthusiasm for the plan:

“(Lt. Christopher) Rorie’s got a platoon on Tryon out of sight, (Maj. Robert) Dance’s platoon is staged now on College out of sight. We’re gonna push their ass straight up Fourth. As soon as we get up on Fourth, we got ‘em bottlenecked now. Rorie’s squad is gonna step out and hammer their ass. Dance’s squad is gonna step out and hammer their ass with gas ... We’re gonna f----n’ pop it up.”

A class action lawsuit is pending, but the NAACP, Charlotte Uprising, ACLU - NC and other organizations successfully sued the city to win reforms including a ban on the use of CS tear gas during protests, a ban on the use of chemical weapons to “kettle” or trap protesters, and other measures.
Lawsuits were used to win reforms

In the spirit of accountability and freedom, many protesters pushed hard in their lawsuits for reforms to policing in their cities and towns. Celia Palmer was thrown to the ground by 2 cops at a George Floyd protest in Colorado Springs, CO. She won a $175,000 settlement against the city that included a new requirement that CSPD give clear dispersal warnings before using force. In Graham, NC, the NAACP sued the county after the sheriff arrested people at a protest for cursing. As part of the settlement, the sheriff and his deputies will have to take implicit bias and racial equity training, and agreed to acknowledge that the public areas around the courthouse where the arrests were made, are “traditional public fora”. More robust reforms, such as restrictions on the use of less lethal weapons have been imposed.

In some cases, cities adopted new restrictions and guidelines without court involvement. After the Sonoma County Commission on Human Rights accused Santa Rosa, CA police of abusing the human rights of protesters, the city hired two different outside firms to investigate further. Police have instituted restrictions on the use of less lethal weapons and tighter supervisory control.

Police in Florence, AL were made to revise their noise and parade ordinances, which they had used to repress the Black Lives Matter protesters. The sheer number of injuries to protesters as a result of indiscriminate use of “less lethal” weapons led to many lawsuits and significant monetary awards (see above). Importantly, several of the settlements included restrictions on the use of these weapons in cities large and small including Columbus, OH, Oakland, CA, Portland, OR, Reno, NV, and Washington, DC.

Settlements in Portland, OR, and Richmond, VA also included increased transparency. Richmond police will turn over body-camera videos, police radio audio, and other records related to policing the protests to the Virginia Library. The city will also donate the protest signs and other artifacts from the protests to the Black History Museum & Cultural Center of Virginia.

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STOP COP CITY
AND THE COURAGE OF RESISTANCE

GEORGIA TRIES TO MAKE THE COST OF PROTESTING TOO HIGH

When it comes to Stop Cop City, Georgia has used every tool in its arsenal to intimidate activists out of the movement. Domestic terrorism charges for 42 people, including a legal observer. Felony charges for posting flyers. Retaliatory arrests of journalists. RICO conspiracy charges. Legal challenges to the democratic referendum. Refusals to grant bond that landed some activists in jail for three months.

For three years now, activists have resisted the construction of what they’ve dubbed Cop City, a police training center that would include shooting ranges, a site for joint training of police and military forces, and mock towns to teach police urban counterinsurgency tactics. The project, as proposed, would decimate one of the forests known as “the fourth lung of Atlanta,” a greenspace formerly frequented by the predominantly-Black surrounding community.

Since the project was proposed, activists have used every democratic channel available. They held protest march after protest march, and showed up at public comment in droves to testify about everything from the land lease terms to preservation of heritage trees. Since elected officials couldn’t be relied upon to act in the peoples’ interest, activists turned to direct democracy, collecting 116,000 signatures to put the issue on the ballot.

Activists have also used direct action tactics to delay the project, to cling to what’s left of the forest, to declare the peoples’ right to the space. Protesters occupied the forest on and off for over two years. When the Atlanta Police Foundation showed up with bulldozers, activists sabotaged equipment, leading to further delays in construction. Protesters dubbed the construction site “Weelaunee People’s Park,” and hosted music festivals and teach-ins at the site. Echoing the Red Power indigenous occupation tactics of the 1960s and 1970s, and drawing on the peaceful disruption tactics of the anti-nuclear and environmental movements, a relatively small group of forest defenders managed to block construction for over two years - until the state escalated repression.
CONFLATING ACTIVISM WITH TERRORISM

In 2017, in the aftermath of Dylann Roof murdered nine people at a Black church in Charleston, SC, Georgia passed an expanded domestic terrorism statute. Defending Rights & Dissent has continually raised the alarm about the collateral harm of terrorism statues. Irrespective of how compelling the circumstances of passage, broad and vague expansions of the definition of terrorism and criminalization of aid to so-called terrorist groups leads to increased surveillance of Muslim activists, anarchists, radical environmentalists, and other usual targets of FBI obsession. Georgia’s statute expanded the definition of domestic terrorism to include attempts to disable or destroy a government facility with the intent of altering policy. In the eyes of the state, nonviolent direct action against Cop City warped into terroristic intimidation.

Prior to December 2022, forest defenders and police maintained an uneasy equilibrium. On incursions into the forest, police slashed water tanks and cut down climbing ropes, but mostly permitted the occupation to continue. In December, something snapped. Police descended in droves upon the forest and began arresting activists on domestic terrorism charges. Arrest warrants cited First Amendment-protected activity, such as being a prison abolitionist and attending other environmental protests, as well as a DHS characterization of the protest movement as domestic violent extremism.

A month later, police conducted another raid. On January 18, 2023, police assassinated activist Tortuguita Terán in broad daylight during park open hours. It was a grim first. While the US military had long materially supported deadly violence against environmental activists abroad, Terán’s death marked the first police killing of an environmental activist on US soil.

ACTIVISTS MEET REPRESSSION WITH SOLIDARITY, GEORGIA STRIKES BACK HARDER

At that point, the movement could have backed down. Relatively few people occupied the forest, and the state had succeeded in sidelining many of them using domestic terrorism charges. But instead of dying off, the movement caught fire. After the murder of Tortuguita’s, national news began reporting on the movement to Stop Cop City, and more activists flooded in. The protest infrastructure built gradually over the years since 2020 kicked into high gear, bailing out activists so they could continue protesting. Activists called for a March Week of Action, which was expected to draw higher numbers of protesters.
The second night of the Week of Action, police struck back hard. A contingent of the Stop Cop City protesters dressed in black bloc marched on the construction site, damaging several pieces of construction equipment, before returning to a protest music festival held elsewhere in the forest. Dozens of cops descended on the music festival, grabbing protesters more or less at random. Anyone wearing black with muddy shoes was a target. Dozens of activists were thrown in jail, including a clearly marked legal observer, even though some people appeared to have just had the bad luck of wearing the wrong color t-shirt to the music festival. Whereas the Atlanta Solidarity Fund had previously bailed out activists in a matter of days, Georgia began to deny bond. Some people spent 90 days in jail. Activists granted bond were restrained from returning to Georgia or contacting others in the movement, throwing up hurdles to the type of coordination of legal defense that had so successfully managed to get charges dropped, notably after the Trump Inauguration Day protests in Washington DC.

**GEORGIA CALS ORGANIZING A CONSPIRACY ACTIVISTS MEET REPRESSION WITH SOLIDARITY, A STRIKES BACK HARDER**

But Georgia wasn’t done yet. Early whispers suggested that prosecutors didn’t just have activists in their crosshairs; they’d go for the movement infrastructure too. First, the Atlanta Solidarity Fund, which bailed out activists and ran an expenses reimbursement account, was charged with charity fraud and money laundering in May. In September, the Georgia attorney general’s office dropped a sweeping indictment of 61 activists. Not all were associated with the Stop Cop City movement; one activist in the alleged conspiracy vandalized police headquarters during 2020 protests, months before the police training center was ever proposed. The statute at issue, the Racketeer Influenced and Corrupt Organizations (RICO) Act, requires that money change hands. The state argued that, through posting bail and reimbursing protest-related expenses, including camping equipment and portable bathrooms, the Atlanta Solidarity Fund was fueling a grand conspiracy to further “virulent anarchist ideals.” The RICO charges represent a marked escalation of the state’s power to chase activists out of the movement.

At each stage of state repression, protesters have responded by doubling down on organizing, by fighting for the cause ever more fiercely, and the movement has grown. Just days after the RICO indictment came down, five members of the clergy ventured onto the construction site and chained themselves to equipment. The same week, organizers announced a mass mobilization on November 10-13. All eyes will be on Atlanta. The state’s strategy has backfired. Every new charge has drawn prosecutors onto legally flimsier ground, and each time, more people have been watching. In spite of profound repression, activists will continue to fight tooth and nail to ensure that Cop City will never be built.
HERE’S WHAT WE’VE DONE:

• In February, we led an organizational letter calling for prosecutors to drop the domestic terrorism charges against Stop Cop City protesters, calling particular attention to infringements on First Amendment-protected activity. 68 other organizations signed on. National news organizations reporting on the new charges, including NPR, Vice, and Al Jazeera, cited our letter as an indication that the terrorism charges face broad criticism from civil liberties and human rights groups. We also organized grassroots activists to flood prosecutors’ inboxes.

• After the March Week of Action, DRAD Communications Director Cody Bloomfield began reporting on political repression for Truthout.

• As early as January, DRAD began filing FOIA requests to uncover the extent of activist surveillance. We filed requests with DHS, the FBI, and all pertinent Georgia agencies. Through a FOIA submitted to the City of Boise, ID, we uncovered evidence that the NYPD Intelligence Bureau was spreading alarm about peaceful vigils, food distribution, and solidarity events, and was circulating these breathless reports to hundreds of jurisdictions across the country. When local agencies denied requests or attempted to price us out of receiving public documents, we found a law firm to begin suits against five agencies in Georgia.

• As Georgia’s repression of activists has grown ever more egregious, DRAD has put out statements condemning Tortuguita’s murder, domestic terrorism charges, assaults on the Atlanta Solidarity Fund, and the RICO indictment.

• Defending Rights & Dissent led a second organizational letter criticizing the RICO indictment. Nearly 100 organizations signed onto the letter. Within 48 hours of the indictment, Cody published a piece in Jacobin and DRAD issued an organizational statement.

• Cody reported two pieces about the November Block Cop City mobilization.
THE WAR ON THE RIGHT TO BOYCOTT EXPANDS AND MUTATES

The right to boycott has been under attack for the past decade, and it’s taken some particularly hard hits this year. In February, the Supreme Court refused to hear a challenge to an Arkansas anti-boycott law that singled out the BDS (Boycott, Divestment, and Sanctions) movement for Palestinian rights. In May, Senator Marco Rubio (R-FL) introduced a state’s rights bill to affirm that states may pass anti-boycott and divestment laws. Rubio broadcast the true intent of the anti-boycott bill crusaders in the title of the bill: the Combating BDS Act of 2023. Meanwhile, the fossil fuel and gun industries leaned hard into an anti-boycott campaign of their own, leading to an explosion of over 100 new bills introduced in 32 states and Congress between January and June of this year.

The Arkansas Times asked the Supreme Court to rule on the constitutionality of a state law requiring state contractors to certify that they are not and will not participate in a boycott of Israel. The newspaper didn’t intend to boycott Israel, but the editor understood the pledge to be a violation of the First Amendment. The law is similar to dozens enacted across the country since 2014 designed to undermine the BDS movement by putting restrictions on the right to boycott. By denying cert in Arkansas Times LP v. Waldrip, the Supreme Court let stand a wrongheaded circuit court ruling upholding the law. Ignoring a half century of jurisprudence recognizing boycotts as political speech protected by the First Amendment, the Supreme Court refused to comment on this outlier Eighth Circuit ruling. Elsewhere, even in conservative jurisdictions, the right to boycott has been recognized as a First Amendment right. Federal courts in Texas, Arizona and Kansas ruled against their states’ anti-B.D.S. laws. Similar to Arkansas, these bills barred the state from contracting with those who would boycott Israel.

But, the Supreme Court’s refusal to correct the record and reaffirm the right to engage in a political boycott could have far reaching implications for social justice far beyond the BDS movement, potentially depriving us of an effective tool. The timing couldn’t be worse, as right wing gladiators against ‘woke’ capitalism have recently begun a legislative campaign to protect arms manufacturers and fossil fuel companies from boycotts.
Two years ago, the rightwing organization ALEC (American Legislative Exchange Council) – which is behind many other anti-protest initiatives – drafted the Energy Discrimination Elimination Act, a model bill to restrict boycotts of energy companies. By 2021, bills were introduced in eight states and Congress to prohibit ‘discrimination’ in the form of boycotts or divestment against the gun and ammunition industries and/or oil and gas companies. In 2022, ALEC expanded on the concept and drafted a new model bill called the Eliminate Political Boycotts Act, designed to protect the oil and timber industries and fight “woke capitalism.”

But the effort really exploded this year. Seven bills have been introduced in Congress, ranging from prohibiting the federal government from entering into contracts with any entity that “discriminates against” the gun or ammo industries, to preventing government entities from investing in mutual funds that use ESG metrics in their investment strategy. ESG - environment, social, and governance standards - has been used by the financial industry for years to minimize risk and align investments with their clients’ values. None of these bills have yet been passed, but across the country, 16 states enacted 26 laws to stymie efforts to boycott or divest from guns and ammo, fossil fuels, or logging.

Boycotts are hard baked into the American DNA. The colonists launched a boycott of British tea in 1767, and we’ve been boycotting for social change and economic justice ever since. It can be an effective tactic - think of the Montgomery Bus Boycott, the UFW Grape Boycott, and the Boycott of Apartheid South Africa, to name just a few. Our right to boycott was challenged in 1969 by white merchants in Claiborne County, Mississippi, who were feeling the pinch from an NAACP-led boycott launched in 1966 demanding equality and racial justice. In 1982, the Supreme Court unanimously ruled for the NAACP, establishing that the First Amendment protects the right to boycott.

The 1982 ruling still stands. And the overwhelming majority of courts who have heard challenges to anti-BDS bills, have cited it in blocking them. Boycotts are protected by the First Amendment, and still hold an honorable place in our history. However, the current Supreme Court’s willingness to sideline itself on this issue is deeply troubling, especially as more politicians and corporations are using state legislatures to subvert our First Amendment rights.