

PRESENTED TO: TENNESSEE ADVISORY COMMITTEE, U.S.
COMMISSION ON CIVIL RIGHTS

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TESTIMONY ON TENNESSEE LEGISLATION SB 8005

To the distinguished members of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights:

Thank you for the opportunity to provide written testimony about the impacts of Tennessee legislation SB 8005 on voting rights and political participation.

I am a senior legal advisor with the U.S. Program at the International Center for Not-for-Profit Law (ICNL), where I work to advance laws that enable civic participation and fundamental freedoms, including the right to peaceful assembly. Since 2017, ICNL has [tracked](#) nearly 250 bills introduced in 45 states that would restrict Americans' right to assemble and protest. Many of those bills have been explicitly introduced in response to black-led protests and protests for racial justice. SB 8005 in Tennessee, enacted in August 2020, is emblematic of the restrictive legislation we have seen, as it creates draconian penalties for conduct commonly related to protests. Significantly, in Tennessee those penalties can also disenfranchise individuals convicted under the law. This has the effect of further chilling protest activity and potentially disenfranchising voters—particularly voters of color.

The 2020 Protests for Racial Justice Prompted a Wave of Anti-Protest Bills

In response to nationwide demonstrations for racial justice that were sparked by the murder of George Floyd in May 2020, state lawmakers have introduced more than 100 bills that restrict the right to peaceful assembly. Eleven states, including Tennessee, have enacted new anti-protest laws during this period. Sponsors of the anti-protest legislation have claimed that the bills are necessary to prevent violence, yet the overwhelming majority of protests in the U.S. are nonviolent; more than 96 percent of the racial justice protests in 2020 involved [no injuries or property damage](#). Further, states including Tennessee already have [numerous laws](#) prohibiting property

destruction and violent conduct, undermining arguments that new legislation is needed to protect public safety. The content of the bills as well as comments by their sponsors make clear that they are targeting Black Lives Matter and other racial justice protests.

SB 8005 is Emblematic of Chilling New Anti-Protest Legislation

Enacted in response to a racial justice sit-in outside the Tennessee Capitol, SB 8005 contains many of the same chilling provisions we have tracked in other anti-protest laws in the wake of the racial justice protests—provisions that we have seen used to chill free speech.

SB 8005 creates extreme penalties for infractions associated with protests, including protest tactics used by racial justice demonstrators in 2020. Under the law, a peaceful sit-in outside the Tennessee statehouse—like the one that inspired the law’s introduction—is a felony offense, as the law expanded the legal definition of “camping” and made it a felony offense to camp on state property in certain circumstances. Penalties for the offense include up to 6 years in prison and a \$3,000 fine. SB 8005 also creates new penalties for peaceful protests on streets and sidewalks, like the racial justice demonstrations that took place throughout Tennessee in 2020: Under the law, someone who blocks a sidewalk or street while demonstrating commits a Class A misdemeanor and can be sentenced to a year in jail. The law provides no exceptions for First Amendment activity, even though streets and sidewalks are public fora where protests and other expressive acts traditionally take place. The law likewise increases penalties for the existing offense of “obstructing” or “interfering with” a lawful meeting. Under the law, protesters who intentionally “interfere with” a meeting of lawmakers or other government officials, including by staging a loud protest, could face up to one year in jail. The law also imposes mandatory minimum jail sentences and requires that individuals arrested for many protest-related offenses be held for 12 hours before being released.

SB 8005’s criminal penalties have already chilled speech. After Governor Lee signed SB 8005 into law, the peaceful protesters occupying the statehouse plaza for racial justice immediately went home, fearing felony charges. Tennessee organizers and activists say that they saw a clear decline in peoples’ willingness to join other protests and demonstrations, following the law’s passage. According to one leading protest organizer, SB 8005 “had the effect of intimidating a lot of people from coming out,” and “made a lot of people a little bit more fearful to participate.”

As the Committee has noted, a felony conviction in Tennessee results in disenfranchisement, among other collateral consequences. An individual with a felony conviction cannot regain the right to vote unless they have overcome numerous conditions and requirements, including payment of all court fees and child support. As

such, the felony penalties established in SB 8005 not only discourage constitutionally-protected protest activity, but jeopardize the right to vote.

SB 8005 Is Likely to Exacerbate Disparities in Access to Civil Rights

The enactment of SB 8005 threatens to worsen the disparate impact of Tennessee’s felon disenfranchisement law, which disproportionately affects people of color. While 9 percent of Tennessee’s voting population cannot vote due to a felony conviction, the rate is 20 percent among black adults.

Historical evidence from the policing protests in the U.S. indicates that enforcement of SB 8005 is likely to be racially biased. Police have historically policed Black protesters more aggressively than White protesters, including being more likely to be present and make arrests at demonstrations with predominantly Black participants. That pattern continued in 2020, when police were more than twice as likely to disperse and use force against protests focused on racial justice issues, as compared to right-wing demonstrations. Charges for protest-related conduct under SB 8005, including the felony offense for “camping” on state property, may likewise be brought against black protesters at higher rates, leading to further racial disparities in felony convictions and disenfranchisement rates.

Conclusion

SB 8005 is an attack on democratic participation, restricting individuals’ right to assemble and protest as well as their right to cast a ballot. As one leading civil rights activist noted, “to criminalize protest activity and disenfranchise voters on top of it defies principles that lie at the heart of our Constitution.” Lawmakers should press for the repeal of SB 8005 and focus on addressing their constituents’ concerns, rather than seeking to silence them.