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FEDERAL COURT RULES WYOMING "AG-GAG" LAW SUBJECT TO CONSTITUTIONAL SCRUTINY

Circuit Court Finds Law Violates First Amendment Rights

The U.S. Court of Appeals for the Tenth Circuit today reversed the district court and held Wyoming's "Data Trespass" law seeks to suppress speech by criminalizing the gathering of data on public land for the purposes of reporting illegal pollution, workplace safety or other violations. The challenge to the state's law, modeled on so-called "Ag Gag" laws in at least eight other states, was brought by a coalition of non-profit organizations, including the Western Watersheds Project, the Natural Resources Defense Council, the National Press Photographers Association and Public Justice. The court's decision marks the third time in the past two years that a federal court has applied the First Amendment to a state statute that attempts to criminalize the collection of information about environmental conditions or agricultural practices.

"The [statutes] regulate protected speech under the First Amendment and they are not shielded from constitutional scrutiny merely because they touch upon access to private property," the court wrote in [its opinion](#). The case has been remanded to the district court for further proceedings.

Wyoming's "Data Trespass" law was enacted after the failure of a trespass suit against Western Watersheds Project's Wyoming Director for gathering water quality data documenting fecal coliform pollution from livestock on Bureau of Land Management Lands, accessing the lands on a BLM road that crossed unmarked private property. The state law is similar to laws on the books in other states, which make it illegal to enter factory farms for the purpose of collecting data and documenting legal violations. However, Wyoming's law is not limited to farms, and instead criminalizes the gathering of any "data" from public lands regarding environmental conditions, if one only accidentally touches private land on the way to that public land. Violators could be criminally charged and sent to jail.

By effectively banning investigations into potential violations of environmental laws, the statutes prohibit private citizens from doing their part to hold polluters, employers and corporations accountable under the law. Similar investigations in the past have led to evidence of health code, environmental and labor violations, as well as criminal convictions and civil litigation. Barring these investigations not only violates the First Amendment, but also puts the health and well-being of Wyoming citizens at risk.

"The court ruled that the State of Wyoming's law violates the Constitutional rights of Americans to gather data on federal public lands," said Jonathan Ratner of Western Watersheds Project. "This is a victory for citizen science and for conservation groups who enforce environmental protection standards when agencies turn a blind eye, and a resounding defeat for the State of Wyoming's efforts to shield special interests from public scrutiny, oversight, and accountability."

“Today’s decision sends a clear message to other state legislatures that attempts to stifle free speech and shield polluters from accountability,” said David Muraskin, Food Project Attorney for Public Justice. “This is the third time a court has held those laws will be scrutinized because they silence speech. The laws are being pushed by lobbyists looking to provide cover for some of the worst corporate actors. The court’s ruling today is a win for transparency, free speech and citizen science.”

“The Wyoming statute tried to cut science and freedom of speech out of government decision making,” said Michael Wall, litigation director of the Natural Resources Defense Council. “In this moment where science and the free press are under attack, the federal court upheld the essential role of public participation and free speech in our democracy. This decision will rightly put one of the most egregiously un-American laws I have seen in recent years on the scrapheap with other censorship laws, where it belongs.”

Wyoming’s draconian statute could have been used to file criminal charges against any member of the public for taking photographs on public land, if they had inadvertently crossed unmarked private property to get there, even on a marked and designated public roadway. The National Press Photographers Association, a plaintiff in the case, also hailed the court’s decision.

“Censoring the press runs counter to the protections embodied in First Amendment. The government should not be allowed to chill that right by criminalizing the media’s role of gathering and disseminating information and images on matters of public concern,” said Mickey Osterreicher, general counsel for the NPPA.

Copies of the court’s ruling are available upon request.