

For Immediate Release

October 30, 2018

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Federal Court Strikes Down Wyoming "Data Trespass" Laws as Unconstitutional

Court Finds the state's Ag-Gag Laws Violate Free Speech Rights and Blocks the Statutes Permanently

CHEYENNE, Wyo. – Wyoming's controversial "Data Trespass" laws are unconstitutional and violate the First Amendment, a federal district court judge ruled on Monday. Before being overturned yesterday, the law criminalized the gathering of data on public land for the purposes of reporting illegal pollution or workplace safety violations, and to add steep civil penalties for data collection. The ruling strikes down the state laws and permanently blocks them from being applied

"The 'data trespass' statutes were a blatant attempt by the Wyoming legislature to block data collection on public lands and take away the public's constitutionally guaranteed freedom of speech and freedom of expression," said Jonathan Ratner of Western Watersheds Project. "For years, Western Watersheds Project has collected scientific data showing that the majority of streams on federal public lands are contaminated by fecal bacteria from livestock, and the legislature clearly intended to suppress that information in order to protect the livestock industry from accountability under the Clean Water Act."

The judge agreed that the laws chilled free speech by effectively banning investigations into potential violations of environmental laws. By threatening citizens with jail time and civil penalties and singling out for heightened punishment people legally collecting environmental data on public lands, the statutes deterred people from doing their part to hold polluters, employers and corporations accountable. Such investigations in the past have led to evidence of health code, environmental and labor violations, and have improved protections for land and wildlife. "There is simply no plausible reason for the specific curtailment of speech in the statutes beyond a clear attempt to punish individuals for engaging in protected speech that at least some find unpleasant," the judge wrote in his ruling.

"This is a sweeping victory for the First Amendment, and a scathing rebuke of the industrial agriculture industry's brazen attempt to hide the ways factory farms impact communities and the environment," said David Muraskin, Food Project Attorney for Public Justice. "Wyoming's attempt to silence and intimidate citizens, advocates and the media has now met the same

demise as similar laws in Idaho and Utah, sending a clear message to industrial agriculture's lobbyists that their dependence on secrecy to sell their product will not survive. These laws are unjust and unconstitutional, and we'll continue to fight them from coast to coast until they have all been defeated or repealed."

In 2018, the Wyoming legislature passed a statute that would have added additional penalties to people exercising their free speech rights by protesting at energy facilities, posing similar Constitutional infringements, but the law was vetoed by Governor Mead.

Wyoming's current law provides that in order to prove trespassing, the accused person has to knowingly and intentionally cross private land, while the data trespass statute allows civil penalties and also adds criminal convictions even when the crossing of private land was accidental. The Natural Resources Defense Council cancelled a multi-year study on air pollution in Wyoming oil and gas fields as a result of the increased risk of jailtime and civil penalties.

"The state tried to criminalize environmental advocacy," said Michael Wall, litigation director of the Natural Resources Defense Council. "That's un-American. And as the federal court ruled, it's unconstitutional."

"We are very grateful to everyone at Public Justice for their extraordinary efforts in this important First Amendment case and for the other groups who joined in bringing this challenge," said Mickey H. Osterreicher, general counsel for the National Press Photographers Association (NPPA), one of the plaintiffs. "We are also very pleased that the court recognized the chilling effect that these laws have on citizens and journalists seeking to gather information on matters of public concern and we hope that other legislatures will think long and hard before proposing and enacting constitutionally infirm statutes," he added.

The Wyoming legislature passed the two data trespass statutes – one imposing jail time and one vastly increasing fines where data collection was involved – after a trespass suit brought against Western Watersheds Project by right-wing attorney Karen Budd-Falen and members the livestock industry failed because the public road used for access wasn't marked with "no trespassing" signs. Budd-Falen is a well-known proponent of the Bundy movement to transfer control of federal public lands to local governments, and recently received a political appointment to a post in the Department of the Interior.

The challenge to Wyoming's data trespass laws, which are cousins of the 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. Attorneys at Public Justice and NRDC represented the plaintiffs.

The decision can be viewed at <https://www.westernwatersheds.org/wp-content/uploads/2018/10/2018.10.29-DKt.-No.-113.pdf>

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