

Jan. 10, 2020

Submitted via e-mail at PublicinputRB@state.sd.us

Re: Public comment on “riot legislation”

Dear Gov. Noem:

The American Civil Liberties Union (ACLU) of South Dakota provides these comments on the draft “riot legislation” your office has circulated. To our knowledge, the draft legislation has not yet been formally filed for consideration in the 2020 South Dakota Legislative Session. Nevertheless, the ACLU of South Dakota has reviewed a copy attached to the “legislative briefing packet” distributed by the Office of the Governor on Dec. 13, 2019.



P.O. Box 1170
Sioux Falls, SD 57101
(605) 332-2508
aclusd.org

The ACLU of South Dakota is an organization that defends the civil liberties and rights, enshrined in both the state and federal constitutions, guaranteed to everyone in our state. We urge the State of South Dakota to formally consult with the people who will bear the heaviest burden of laws regulating protest. We are unaware of any efforts to meaningfully engage with our partners and stakeholders – the very plaintiffs we represented in the successful litigation against the original “Riot Boosting Act.”

It is imperative that an open and transparent hearing process be conducted on any proposed legislation to avoid the mistakes of 2019. Timely and adequate notice to affected constituencies and ample time for testimony is crucial.

It is irrefutable that the 2019 “Riot Boosting Act” and the current proposal to replace it was sparked by the opposition of some South Dakota tribes and indigenous peoples to the planned construction of the Keystone XL Pipeline. Indigenous peoples in the United States—and here in South Dakota—have suffered discrimination and racial injustice at the hands of the government since before our state’s founding. That legacy lives on today in both subtle and overt ways. We feel this legacy is deeply entwined in the current discussion of oil pipelines, free speech, and protest.

Though the ACLU’s work spans many issue areas we hold a special reverence for the Bill of Rights and especially the First Amendment and the right to peacefully assemble and protest. In addition to our organizational mission of defending freedom of speech, we are also an organization that is deeply committed to racial justice. At its best, this commitment shapes and contextualizes all of our work, and this nexus was clearly highlighted by the ACLU’s successful litigation against the original “Riot Boosting Act.” That context remains inescapable in our consideration of the impact of any legislation intended to replace that now-unenforceable law.

The ACLU of South Dakota will monitor the draft legislation once it is formally introduced in the 2020 South Dakota Legislative Session and will analyze the constitutionality of the bill, its implications for the free speech and right to peacefully assemble of South Dakotans, and its impact on indigenous communities in our state.

Regards,

Candi Brings Plenty
Indigenous Justice Organizer
American Civil Liberties Union of South Dakota
SD_CBP@aclu.org