



Tennessee Advisory Committee to the U.S. Commission on Civil Rights Civil and Voting Rights in Tennessee Part I: The Civil Rights Effects of S.B. 8005

In 2020, racial justice and anti-police brutality protests erupted nationwide after the death of George Floyd, including in Tennessee, where protesters called for local policymakers to prioritize police reform and address racial inequities. The protesters occupied the capital lawn in Nashville 24 hours a day for 60 days. Despite existing laws barring camping on state property, concern for public safety prompted new legislation. Senate Bill 8005 (S.B. 8005) enhanced criminal penalties for certain actions, with the loss of voting rights as a potential collateral consequence.

Civil rights advocates criticized the new legislation, arguing that the provisions infringed upon both civil and constitutional rights. They were concerned that the punishments would chill protests, stifle free speech guaranteed under the First Amendment, harm demonstrators, and disenfranchise protected classes of Tennesseans.

How did S.B. 8005 amend existing laws?

S.B. 8005 was signed into law on August 20, 2020. It enhanced sanctions on specific acts of protest. However, Tennessee had existing statutes that addressed the conduct highlighted in the new bill (i.e., criminalized trespass, violence, and vandalism).

The Equal Access to Public Property Act of 2012 established knowingly camping on state property as a Class A misdemeanor. S.B. 8005 enhanced this violation to a Class E felony, which can result in up to six years in prison and the loss of voting rights. In addition, other forms of protest were upgraded to Class A misdemeanors, involving up to one year of imprisonment and higher fines. The increased charges also included a 12-hour hold upon arrest without bail.

Another critical component of S.B. 8005 includes an addition to Title 39 of the State Code that classifies criminal trespass as a Class E felony committed on property belonging to a law enforcement officer.

What were the motivations that led to the introduction of S.B. 8005?

Supporters of the bill expressed concern about violence and the need to establish safety due to the ongoing protests, especially given the escalating civil unrest occurring in the Pacific Northwest at the time. Some also

Key Points:

- S.B. 8005 enhanced criminal penalties for certain acts of protesting which could lead to disenfranchisement, despite there being existing state statutes that addressed related conduct.
- Supporters of the Bill wanted to ensure safety and that public property could remain a space for diverse viewpoints.
- Opponents criticized the rushed timeline for debate, the infringement on the free speech of people of color - especially since no similar actions were taken by the Legislature based on past protests - as well as the high level of discretion given to law enforcement
- Opponents feared an increase in disenfranchisement due to the criminal penalties and a chilling effect on demonstrations.

believed the protests discouraged tourists from visiting the Capitol grounds. The bill's advocates felt the protests allowed only one viewpoint or "voice" to be heard on public state property, thereby establishing an autonomous zone, an illegitimate form of protest.

Opponents of S.B. 8005 speculated that legislators were motivated by their discomfort with protesters' behavior and who they were—predominantly young Black individuals. Historically, demonstrations by other groups in Tennessee (e.g., Occupy Wall Street, anti-tax protests, Medicare cuts) did not result in new anti-protest laws.

What were the criticisms of S.B. 8005 at the time?

Critics of the bill believed the law violated the First Amendment by impinging on Tennesseans' free speech and assembly rights on public property, like streets and sidewalks, where protests traditionally occur. Demonstrators feared liability for activities that constitute protected expression, particularly because it could lead to disenfranchisement.

There was concern about the severity of the punishments, which some believed was antithetical to Governor Lee's criminal justice reform platform. In addition, the bill was added as a special session topic and passed within an unusually swift timeline. Some panelists believed these

measures were calculated to dissuade further discussion between the protestors, lawmakers, and Governor Lee.

Additional critiques included the cost of the bill upon its passage. S.B. 8005's enhancements mandate minimum sentences between 30 and 90 days, guaranteeing more people in correctional facilities and significantly increasing state and local expenditures.

Opponents emphasized the potential for arbitrary and discretionary enforcement of S.B. 8005. The broad language of the statute does not specify which state properties are affected, its application to unhoused individuals, or the need for law enforcement to notify protestors of illegal behavior.

How may S.B. 8005 impact communities of color and young people?

Individuals opposed to S.B. 8005 opined that its enactment targeted protestors with the intent of stripping the right to vote for people of color. The threat of severe criminal penalties was used to attack free speech by reducing the legal space for speaking out against racial injustices.

The enactment threatened to worsen the disenfranchisement of Tennesseans charged and/or convicted of a felony under this law through the loss of voting rights and collateral consequences like stress, financial hardship, and loss of employment; at the time, 20% of Black Tennesseans had already lost the right to vote due to a felony conviction.

The passage of S.B. 8005 intimidated protestors and had a chilling effect, stifling the freedom of expression guaranteed by the First Amendment. The protestors dispersed immediately after the bill was enacted, and the willingness to express opinions and ideas through demonstration declined. In 2020, police were more than twice as likely to disperse crowds and use force against protests focused on racial justice. After S.B. 8005 was passed, some believed that police used unnecessary force to regulate speech and arrest people of color.

The legislation chilled the behavior of young people in the aftermath of its passage due to the fear of felony convictions. It was unclear to these young protestors how

such an arrest could impact their future careers and their ability to vote in upcoming elections.

Recommendations (*selected*):

- The U.S. Commission on Civil Rights should condemn legislation that may be enforced selectively and/or applied based on underlying speech content.
- The U.S. Commission on Civil Rights should encourage the legislature to collect information about arrests and prosecutions under S.B. 8005, with particular attention to disparate impact on the federally protected classes of race, color, national origin, sex, disability, and religion.
- The Tennessee General Assembly should avoid passing legislation whose targeted activity is already subject to penalty by existing statute without sufficient public input, research, hearings, and deliberation on an evidentiary basis for such legislative change.
- The Tennessee General Assembly should repeal the provision of S.B. 8005 that enhanced the criminal liability for a violation from a misdemeanor to a Class E felony violation.
- The Tennessee Governor should veto legislation that limits voting access when the legislation passes during a special legislative session.

The United States Commission on Civil Rights maintains 56 Advisory Committees. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its fact-finding, investigative, and information dissemination functions.

This product is part of the Tennessee Advisory Committee's study on the Civil and Voting Rights in the state. This is one of two memorandums drawn from the report, focusing specifically on "Part I: The Civil Rights Effects of S.B. 8005." This policy-oriented summary of the published report is intended to aid stakeholders seeking solutions to this complex issue. You can find the full report here: https://www.usccr.gov/files/2024-07/tn-report_voting-rights_2024.pdf.

The brief may rely on testimony, studies, and data generated from third parties. The views, findings, and recommendations expressed in this report are those of a majority of the Tennessee Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government.