

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

November 3, 2017

**OFFICE OF
APPELLATE COURTS**

State of Minnesota,

Appellant,

vs.

Annette Marie Klapstein,

Respondent (A17-1649),

Emily Nesbitt Johnson,

Respondent (A17-1650),

Steven Robert Liptay,

Respondent (A17-1651),

Benjamin Gary Joldersma,

Respondent (A17-1652).

**APPLICATION OF MINNESOTA
CHAMBER OF COMMERCE TO
PARTICIPATE AS AMICUS CURIAE
AND REQUEST LEAVE TO FILE BRIEF**

TRIAL COURT CASE NOS. 15-CR-16-413
15-CR-16-414, 15-CR-16-425, 15-CR-17-25

COURT OF APPEALS CASE NOS.
A17-1649, A17-1650, A17-1651,
A17-1652

TO: THE MINNESOTA COURT OF APPEALS AND TO COUNSEL FOR ALL PARTIES
ABOVE-NAMED.

Pursuant to Minnesota Rule of Appellate Procedure 129.01, the Minnesota Chamber of Commerce respectfully moves for leave to file a brief as *amicus curiae* in the above-entitled matter. The Chamber supports the State's position and wishes to emphasize that the necessity defense to a criminal prosecution does not apply to defendants' alleged acts of indirect civil disobedience. The Chamber takes no position on the ultimate resolution of the underlying prosecution.

IDENTITY OF THE MOVANT

The Minnesota Chamber of Commerce is the state’s largest business organization, representing more than 2,300 businesses of all types and sizes across Minnesota with non-partisan advocacy and member services. The Minnesota Chamber advocates before the Legislature, regulatory agencies, and the Courts for laws that will make Minnesota a better place for businesses to locate, stay, and grow. By strengthening the business environment, the Chamber seeks to create a thriving economy for all Minnesotans.

THE MOVANT’S INTEREST AND POSITION

The Chamber has two interests in this matter: a private interest for its members and a public interest in the state’s business climate and the proper interpretation of criminal laws. The defendants contend that their alleged criminal trespass is excused under the doctrine of necessity—in their case, “political necessity.”¹ The Chamber wishes to explain that expanding the necessity defense to encompass defendants’ “indirect” act of civil disobedience is contrary to this Court’s precedent and threatens grave harm to Minnesota’s business climate.² Accepting defendants’ theory has the potential to harm property owners statewide by subjecting them to consequence-free trespass by any person who claims aggrievement about state or federal public policy. This would make Minnesota a less stable and less attractive place to do business.

¹ Defense Supplemental Brief on Their Affirmative Defense of Necessity, 15-CR-16-413 (Sept. 11, 2017).

² “Direct” civil disobedience occurs when “the law being broken is the object of the protest.” *Rein*, 477 N.W.2d at 718 (citing *United States v. Schoon*, 939 F.2d 826, 829 (9th Cir. 1991)). For example, “the civil rights lunch counter sit-ins . . . constituted direct civil disobedience because the protestors were challenging the rule that prevented them from sitting at lunch counters.” *United States v. Schoon*, 971 F.2d 193, 196 (9th Cir. 1991), as amended (Aug. 4, 1992).

“Indirect” civil disobedience occurs when “protestors [do] not challeng[e] the laws under which they were charged.” *Id.* For example, in this case the defendants did not allegedly violate the laws against trespass because they oppose trespass law; rather, they allegedly broke trespass laws because they challenge energy policy generally.

Moreover, the risks of trespass are perhaps most pronounced when the trespass affects the state's critical energy infrastructure. The defendants are accused of cutting a portion of a fence, damaging other property, and performing a potentially dangerous shutdown of the oil pipeline.³ Tampering with energy infrastructure exposes the state to high physical and economic risks associated with damage and failure of that infrastructure.

Thus, the outcome of this criminal appeal will have profound ramifications for business and public safety across the state.

THE MOVANT'S *AMICUS* BRIEF WILL BENEFIT THIS COURT

This appeal, while framed as an evidentiary dispute, is fundamentally a question whether the necessity defense can justify acts of *indirect* civil disobedience—acts for which the doctrine was not designed and is ill-suited. The defendants in this case engaged in their alleged trespass not to challenge the laws they now stand accused of violating, but rather to engage in a larger, coordinated effort to interfere with energy infrastructure and force changes in state and national energy policy.⁴ The doctrine does not exist to permit such alleged criminal acts. Courts, including this one, have recognized that the necessity defense simply does not apply to such acts of indirect civil disobedience because defendants who engage in indirect disobedience can *never* meet three of the four elements of necessity.

³ See, e.g., Transportation Safety Board of Canada, Pipeline Investigation Report P02H0052 (December 7, 2002), <http://www.bst-tsb.gc.ca/eng/rapports-reports/pipeline/2002/p02h0052/p02h0052.asp> (“During an unscheduled shutdown of a pipeline and with the sudden blockage of fluid in motion, a hydraulic surge is created. The kinetic energy, released as a transient pressure surge wave, can spike up the system's operating pressure, destroying system instrument recorders, pumps, pipes, fittings, and valves.”).

⁴ *Climate Necessity Defense Approved by Minnesota Judge in Tar Sand “Valve Turner” Case*, Climate Disobedience Center, http://www.climatedisobedience.org/climate_necessity_defense_approved_by_minnesota_judge_in_tar_sands_valve_turners_case (last visited November 2, 2017) (“The case is the result of coordinated ‘Shut It Down’ actions to halt the flow of all tar sands pipelines in the country on October 11, [2016].”).

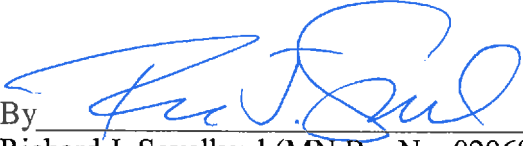
The role of an *amicus* is to “inform the court as to facts or situations which may have escaped consideration or to remind the court of legal matters which have escaped its notice.” *State v. Finley*, 64 N.W.2d 769, 773 (Minn. 1954). Because the State seems poised to address why there was no imminent harm to defendants, this Court would benefit from a discussion of the poor fit between the remaining elements of the necessity defense and acts of indirect civil disobedience. As a representative of Minnesota businesses—including those that own and operate energy infrastructure—proposed *amicus* is uniquely situated to offer such a targeted examination of the necessity defense, its inapplicability to acts of indirect civil disobedience, and the negative consequences to Minnesota’s business climate if the defendants’ position were adopted.

CONCLUSION

The Minnesota Chamber of Commerce respectfully requests that this Court grant permission to file its *amicus* brief.

Submitted,

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*Application for admission *pro hac vice* pending