

COPY

IN THE MUNICIPAL COURT OF THE CITY OF HELENA  
COUNTY OF LEWIS & CLARK  
BEFORE THE HONORABLE BOB WOOD, JUDGE

	)	
CITY OF HELENA,	)	
Plaintiff	)	
	)	
Vs.	)	Case No: 2012-NT-4385 et seq
	)	
Bonnie McKinlay, et al.,	)	ORDER
Defendants	)	
	)	
	)	

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The issue before the Court arises from a series of peaceful protests at the Capitol in August, 2012. The protests arose in the context of opposition to potential governmental action on coal exports and movement. The Protestors have expressed a deep concern over environmental issues. For the purposes of this order, the Court takes as operative facts that the protestors had gathered at the Capitol. At some stage, they were asked to leave. They did not do so and were charged with misdemeanor Trespass. They now come to the Court with a defense of necessity/compulsion, as described in Section 46-2-212, MCA. That provision reads as follows:

**45-2-212. Compulsion.** A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct that the person performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if the person reasonably believes that death or serious bodily harm will be inflicted upon the person if the person does not perform the conduct.

The Defendants have also raised the 1<sup>st</sup> Amendment as a defense to the

charges. The Court recognizes that the defenses in Section 45-2-212 obviously exist in Montana. The freedom of speech is without doubt. The issue is whether the facts in this case provide the basis for the defense. There have been cases all over the country which have dealt with the defense of necessity or compulsion.

Even in Kansas, the Courts have said,

“The harm or evil that a defendant, who asserts the **necessity defense**, seeks to prevent must be a legal harm or evil as opposed to a moral or ethical belief of the individual defendant.”

City of Wichita v. Tilson, 253 Kan. 285 (1993)

In Michigan the following:

“An act which would otherwise constitute a crime may be excused on the ground that it was done under compulsion or duress. The compulsion which will excuse a criminal act, however, must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough. “

People v. Hubbard, 115 Mich. App. 73 (1982)

In Montana the Montana Supreme Court rejected similar defenses in *City of Helena v. Lewis*, 260 Mont. 421 (1993). This Court is intimately familiar with the facts and the participants in that case. After a difficult year or more of trials and motions the Supreme Court finally got the cases and determined that the defenses essentially offered by the Defendants here are inapplicable. The Court cited a Pennsylvania case for an important proposition:

“We live in a society of laws and no individual is entitled to raise himself above the law. We are each bound by the law no matter its source. If we were free to pick and choose which laws we wished to obey, the result would be a society of strife and chaos . . . Democracy allows the citizenry to protest laws of which they disapprove. But they must nonetheless obey such laws or face the legal consequences. *Commonwealth v. Markum* (Pa. Super. 1988), 541 A.2d 347, 350  
And from Lewis:

"The same reasoning applies to the Defendants here. Lewis and Brisendine are entitled to hold and act upon their personal beliefs. Those personal beliefs, however, do not afford the Defendants immunity from the law. They must accept the legal consequences of their choice to trespass on the Clinic's property."

See also State v. Ottwell (1989), 240 Mont. 376

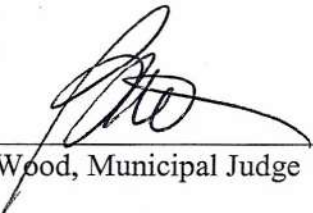
This Court does not doubt the sincerity of the protesters. However, the law does not provide for the defenses offered either in "necessity" or "compulsion" or free speech

"National **defense** policy is made through the political process, to which petitioners and most other citizens have free access. U.S. Const. amend. I protects the right to lawfully protest any political decision. In a free society neither the political process nor the avenue of lawful protest is an exhaustible remedy for an unwise policy decision." In re Weller, 164 Cal. App. 3d 44 (1985)

As applied to this case, the fact the protesters have not been yet successful in the political realm, the court of public opinion or the courts in general does not mean the alternative of violation of law is a new, open option.

The Motion in Limine is GRANTED.

Dated this 5<sup>th</sup> day of April, 2013

  
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Bob Wood, Municipal Judge

Cc: Mr. Hindoien, Mr. Gentry, Mr. Hildes