

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

November 3, 2017

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA,

Appellant,

A17-1649

A17-1650

A17-1651

A17-1652

**APPLICATION OF
WILLIAM P. QUIGLEY
TO PARTICIPATE AS
AMICUS CURIAE AND
REQUEST FOR LEAVE
TO FILE BRIEF**

v.

ANNETTE MARIE KLAPSTEIN,
EMILY NESBITT JOHNSTON,
STEVEN ROBERT LIPTAY,
BENJAMIN JOLDERSMA

Respondents.

Pursuant to Minn. R. Civ. App. P. 129.01, applicant William P. Quigley, Esq., requests leave to participate in the above-named case. Mr. Quigley's brief will support respondents Annette Klapstein, Emily Johnston, Steven Liptay, and Benjamin Joldersma and will suggest affirmance. Mr. Quigley supports the respondents' position and will discuss the applicability of the necessity defense in instances of non-violent civil disobedience.

IDENTITY OF THE MOVANT

Mr. Quigley is a law professor and Director of the Law Clinic and the Gillis Long Poverty Law Center at Loyola University in New Orleans. He has written about the use of the

necessity defense in civil disobedience cases in *The New England Law Review*.¹ He was General Counsel of the ACLU of Louisiana for 15 years and was the Legal Director of the Center for Constitutional Rights from 2009 to 2011. Mr. Quigley has litigated numerous cases with the ACLU of Louisiana, the NAACP Legal Defense and Educational Fund, Inc., and the Advancement Project.

THE MOVANT'S INTEREST IN THE MATTER

Mr. Quigley's interest in the matter is public in nature. Mr. Quigley's interest derives from his understanding of the history and use of the necessity defense and its appropriateness in this case, as well as his extensive experience defending the rights of protesters and political activists. Mr. Quigley seeks to provide information and argument relevant to the Court's review of the issues of law that are likely to be dispositive to this Appeal. He especially wishes to emphasize that the trial court ruled correctly that the defendants had met their strict pre-trial burden of presenting *prima facie* evidence for each element of the necessity defense, and that imposing any higher burden — or categorically barring defendants' proffered defense — would violate crucial constitutional protections for criminal defendants.

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

An *amicus curiae* brief from Mr. Quigley is desirable because it will clarify the law of the necessity defense in political protest cases. The appropriateness of the necessity defense in such cases has been a subject of debate and has not been conclusively resolved in Minnesota. An *amicus curiae* brief from Mr. Quigley will discuss the important doctrinal and constitutional reasons for treating political protest cases in a similar fashion to other necessity cases as well as the deleterious consequences for political activism that would flow from imposing an overly

¹ Quigley, *The Necessity Defense in Civil Disobedience Cases: Bring In the Jury*, 38 *New Engl. L. Rev.* 3, 14-26 (2003).

restrictive evidentiary burden on necessity defendants. In particular, his brief will shed light on the propriety of allowing the necessity defense in criminal trials of protesters whose actions were meant to mitigate climate change. It will also discuss the validity of distinctions between so-called “direct” and “indirect” civil disobedience and their application to the facts of this case. The outcome of the appeal will have important consequences for the free exercise of civil liberties and political dissent in the state of Minnesota.

An amicus curiae brief from Mr. Quigley will also shed light on the constitutional implications of denying the necessity defense in cases of civil disobedience where factual allegations are largely uncontested. The United States Constitution guarantees the right of criminal defendants to be given a meaningful opportunity to present a complete defense.² That right has been interpreted by the United States Supreme Court as an opportunity to “to present [their] version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies.”³ Whether the defendants in this case and other cases of civil disobedience are permitted to present their version of the facts in the form of necessity evidence will have important ramifications for political expression and dissent in the state of Minnesota. As the trial court in the case ruled, necessity defendants who can meet the demanding burden of a pre-trial showing of *prima facie* evidence (including, in this instance, extensive scientific and academic documentation of targeted harms, the anticipated connection between the defendants’ action and the mitigation of those harms, and the absence of legal alternatives, all supported by expert witness affidavits) enjoy the right to present their defense to a jury. Mr. Quigley wishes to emphasize that in criminal cases — whether of a political nature or otherwise — the jury acts as

² *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

³ *Washington v. Texas*, 388 U.S. 14, 19 (1967).

factfinder, and that the proper avenue for determining whether the defendants merit acquittal by reason of necessity is through jury deliberation.

Finally, an amicus curiae brief from Mr. Quigley will illuminate the constitutional nature of the harms the defendants in this case sought to avert. A federal district court recently held that there is a fundamental substantive due process right to a stable climate system capable of supporting human life.⁴ Additional constitutional considerations are presented by the application of the public trust doctrine to the facts of this case. A growing number of courts have recognized that the government's public trust duties extend to protection of the atmosphere from unchecked greenhouse gas emissions causing climate harms.⁵ As the defendants in this case and an increasing number of other cases sought to avert those harms, and as those harms are constitutional in nature, they are important subjects deserving of the Court's attention in the disposition of this appeal.

CONCLUSION

Mr. Quigley respectfully requests that this court grant permission to file his amicus brief.

Submitted,

Dated: November 3, 2017

/s/ William P. Quigley
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⁴ *Juliana v. U.S.*, 2016 U.S. Dist. LEXIS 156014 at *32-33 (D. Or.).

⁵ *See, e.g., id.* at *40-49.

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