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CLIMATE NECESSITY DEFENSE RECOGNIZED IN STATE OF WASHINGTON

SPOKANE, WA -- In a major victory for protest rights and the climate justice movement, the Washington Supreme Court ruled last week that in some instances defendants may present courtroom evidence justifying their acts of civil disobedience.

The decision stemmed from a protest by the Reverend George Taylor, who in 2016 blocked railroad tracks carrying coal and oil through Spokane. After being charged with trespass and obstruction of a train, Reverend Taylor attempted to assert a necessity defense, a legal theory that allows criminal defendants to argue that nonviolent direct action is necessary to mitigate more serious harms – in Reverend Taylor's case, the harms of climate change and the health and safety risks posed by fossil fuels. A state appellate court blocked Reverend Taylor's necessity defense, finding that there are always lawful alternatives to civil disobedience. Last week's decision by the Washington Supreme Court overruled the lower court and established a clear framework for activists to argue at trial that the necessity of their protest actions entitles them to acquittal.

"This ruling marks a significant step forward for the law of civil disobedience," said Alex Marquardt, an attorney with Climate Defense Project, a nonprofit legal organization that has advanced several climate necessity cases and submitted an amicus brief from law professors in the Taylor case. "It's the clearest statement we've had from a higher court that, in the context of the climate emergency, breaking the law may sometimes be justified."

Reverend Taylor's case now returns to the district court, where the Veterans for Peace activist will try to convince a jury that the imminence and severity of climate change and the dangerousness of fossil fuel infrastructure — and the government's failure to adequately address those harms — made it reasonable for him to block the railroad tracks. This argument has met with some success in other recent cases. Activists in Minnesota and Oregon have walked free after judges tossed out charges or juries deadlocked on a verdict, and the activist Ken Ward won approval from a Washington state appellate court to present a climate necessity defense. The recent Supreme Court decision resolved a split between Washington appellate courts on the issue, marking the first time a state's highest court has permitted the necessity defense in a case involving civil disobedience.

The portion of the Supreme Court decision dealing with the necessity argument was decided 7-0, signaling a remarkable degree of judicial consensus on the strength of the defense theory.

The court's opinion, written by Justice Susan Owens, cited voluminous evidence presented by expert witnesses such as climate scientists and political theorists that civil disobedience can be effective and that traditional, legal methods of political advocacy have failed to significantly curb harms posed by oil and coal trains. Crucially, the court found that the jury — rather than judges — should determine whether there were other viable courses of action to address these harms: "[O]n the issue of the necessity defense, Rev. Taylor has made the necessary showing to create a question of fact for the jury. Whether no reasonable legal alternatives exist must take into account the specific facts of the case."

Although Reverend Taylor's protest action was directed at the problems of climate change and fossil fuel infrastructure, the necessity defense is broadly applicable and has been advanced by anti-war and anti-nuclear activists for decades. In ruling that a jury is entitled to decide on Reverend Taylor's necessity argument, the court opened the door for activists of other causes to present similar cases.

Reverend Taylor was represented by Rachael Osborn and Eric Christianson at trial and by Todd Maybrown and Alana Brown on appeal. Karen Lindholdt will be lead counsel for Reverend Taylor during future proceedings in the district court.

"Reverend Taylor is very pleased with the Supreme Court's ruling," explained Maybrown. "He is looking forward to the day where he will have the opportunity to present these issues to a jury of his peers."