

## Proof of Climate Change as a Greater Harm – Criminal Case Citations

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The following are criminal cases in which defendants have presented a defense of necessity and a court has admitted evidence of the harm of climate change. Defendants have experienced varying degrees of success in these cases:

- Court finding that defendants had met pre-trial burden to present climate change evidence:

*New York v. Fraczek; Minnesota v. Klapstein; Washington v. Taylor; New York v. Cromwell; New York v. Shalauder*

- Court finding after presentation of evidence that climate change is a greater harm:

*Massachusetts v. Gore* [civil infraction]; *Washington v. Brockway*;

*Minnesota v. Klapstein, Washington v. Taylor, and Washington v. Brockway* are the only cases in which the court has (orally or in writing) explicitly discussed climate change evidence and found that it satisfied the necessity defense's greater harm or imminent harm elements.

In addition, courts in non-criminal cases have taken judicial notice of climate change harms. Notable cases include: *Los Angeles v. N.H.T.S.A.*, 912 F.2d 478, 494 (D.C. Cir. 1990); *Connecticut v. American Electric Power Co. Inc.*, 582 F3d 309, 342 (2<sup>nd</sup> Cir. 2009). *rev'd on other grounds*, 564 U.S. 410 (2011); and *Foster v. Wash. Dep't. of Ecology*, No. 14-2-25295-1, at \*1 (Wash. Super. Ct., Nov. 19, 2015)/ See Brenda Heelan Powell and Josephine Yam, *Judicial Notice of Climate Change*, Symposium on Environment in the Courtroom: Evidentiary Issues in Environmental Prosecutions and Hearings (Mar. 6-7, 2015), [http://www.cirl.ca/files/cirl/brenda\\_heelan\\_powell\\_andjosephine\\_am-en.pdf](http://www.cirl.ca/files/cirl/brenda_heelan_powell_andjosephine_am-en.pdf).

Following are the necessity cases mentioned above:

***New York v. Fraczek et al., Cortlandt Town Ct., N.Y. (no docket number\*), July 23, 2018 (oral)***

The court made an oral pre-trial ruling that the defendants had met their pre-trial burden of providing evidence that “would, if established” constitute a necessity defense; the evidence included the harms of climate change as well as the local dangers of a gas pipeline. Trial began in July but has been deferred until September.

\* The trial is taking place in a very small town court and has not yet been assigned a docket number.

***Minnesota v. Klapstein et al.***

**Order Dismissing Petition for Further Review, Minn. Sup. Ct., A17-1649, A1 7-1650, A17-1651, A17-1652, July 17, 2018**

The Supreme Court dismissed the state's petition for further review of the Appeals Court dismissal without making any findings of fact or conclusions of law.

**Order Dismissing Appeal, Minn. Ct. App., A17-1649, A1 7-1650, A17-1651, A17-1652, April 23, 2018**

The Appeals Court dismissed the state's appeal of the trial court's grant of the necessity defense without making any findings or conclusions related to climate change (the court focused on the "critical impact" of the trial court's order).

**Order Regarding Necessity Defense, Dist. Ct. of the Ninth. Jud. Dist., Choteau Cty. Minn., No. 15-CR-16-413 15-CR-16-414 15-CR-15-425 15-CR-16-25, Oct. 11, 2017**

The trial court found that the defendant had met their *prima facie* burden on each element of the necessity defense (including greater harm and imminent harm); the defendants had extensively briefed the climate change issue but the court made no specific findings on the issue.

***Massachusetts v. Gore et al*, Boston Mun. Ct., Mass., No. 1606CR000923, Mar. 27, 2018 (oral acquittal) [civil infraction]**

The court, without making specific findings, denied the state's in limine motion to block the defense's necessity defense, which was based on climate change. The prosecution then lowered the charges to civil infractions, avoiding a jury trial. The court then acquitted the defendants, finding that they had satisfied the necessity elements and, at the defendants' request, finding them acquitted by reason of necessity.

***Washington v. Taylor*, Findings of Facts, Conclusions of Law, and Order, Spokane Cty. D. Ct., Wash, No. 6Z0117975, March 13, 2018.**

In a written opinion, the trial court found that climate change and the risk of oil and gas trains to the Spokane region were a greater harm than those posed by the defendant's protest action (page 10) and allowed the defendant to present expert witness testimony and the necessity defense at trial (page 11). The state is currently seeking review of this decision at the state Appeals Court.

***New York v. Cromwell*, Decision on the Necessity Defense, Town of Wawayanda Justice Court, N.Y., No. 15120561 16010030, 15120476, 15120478, 15120477, 16010031, Oct. 20, 2016)**

Prior to trial, the court found that the defense's proffered facts, including those on the dangers of climate change, "would, if established," constitute a defense. After the presentation of evidence at a bench trial, however, the court found the evidence insufficient and convicted them.

***Washington v. Brockway et al.* Snohomish Co. Dist. Ct., Wash., No. 5035A-14D, 5039A-14D, 5040A-14D, 5041A-14D, 5042A-14D**

**Reconsideration Hearing, Jan 7, 2016 (oral)**

The trial court found that the defense's evidence, including evidence on the dangers of climate change, met the *prima facie* burden for a necessity defense.

**Findings of Fact and Law and Conviction, Jan. 13, 2016 (oral)**

After presentation of evidence at trial, the court found that the defense's evidence on climate change had satisfied the greater harm and imminent harm elements, but blocked the jury from hearing a necessity instruction after ruling that the defendants had not presented sufficient evidence on the legal alternatives element. The defendants were convicted.

***New York v. Shalauder*, N.Y.C. Crim. Ct., No. 2014NY076969, Mar. 5, 2015**

At a bench trial, the court allowed the defendants to present evidence of climate change in support of a necessity defense but then ruled that this evidence did not satisfy the defense's requirements and convicted.