PRESS RELEASE
For immediate release — June 27, 2019

Contact: Contact: Peter Anderson (608) 231-1100

STATEMENT BY 350-MADISON IN RESPONSE TO WISCONSIN SUPREME COURT'S DECISION IN *ENBRIDGE v. DANE COUNTY*

The Wisconsin Supreme Court today reversed a 2018 Court of Appeals decision in the case of *Enbridge v. Dane County*. It is necessary to recall the history of this case to grasp just how corrupt the state Supreme Court has become.

In 2015, the Canadian Enbridge pipeline company sought permission to triple the capacity of its existing hazardous tar sands oil pipeline through Dane County, making it the largest pipeline in the country. This request raised red flags because the company had recently caused the worst inland oil spill in U.S. history near Kalamazoo, Michigan, which cost $1.2 billion to clean up, through their own gross negligence. Regulators were so appalled by the company's so incompetence, they compared the its managers to "Keystone Kops."

Even though this pipeline posed serious risks to the people and the environment along the corridor, the County's Zoning and Land Regulation Company did not seek to bar the expansion. Instead, after consulting with the country's leading risk manager, it took the mildest and most conservative response to this threat. It required Enbridge to purchase just $25 million of clean up insurance. This was done to protect taxpayers from being forced to bailout the company if Enbridge's next major accident happens in Dane County in the climate-constrained future when the fossil fuel industry will be financially hobbled by renewable energy.

Instead of the $35 billion corporation simply spending the $60,000 premium for the insurance policy to protect taxpayers from their misdeeds, records on file with the Ethics Commission reveal that Enbridge hired one of the Capitol's most high powered lobbyists to sneak an amendment through the 2015 State Budget, which was intended to override Dane County's reasonable insurance policy, even though Enbridge swore – falsely -- to Wisconsin's courts that it had nothing to do with the amendment, and even though the text had no application to anyone else.

The Court of Appeals exhaustively reviewed the record and, in a 48 page decision, concluded that although the budget rider did only pertain to Enbridge, it could not quality for the law's protections because the company's lobbyist had made critical drafting errors.

Enbridge then sought out the support of Wisconsin Manufacturers and Commerce, which had contributed $2.5 million to the election of one of the Justices, a half million to another, and had made known it would spend more against any challengers to right wing ideologues to the court. Together they sought high court review, and, today, won a decision overturning Dane County's eminently reasonable insurance requirement.

350-Madison spokesman Peter Anderson said that "the role of huge corporate campaign contributions has come to so dominate Supreme Court elections in Wisconsin, and the Court's decisions have come to so closely track the big money's briefs, even when they completely ignore the facts of the case, justice for the people of Wisconsin can no longer be secured." For details, see Technical Attachment.

TECHNICAL DISCUSSION

The Walsh dissent (PDF p. 34) points squarely to the fatal flaw in the corrupt Supreme Court decision.

The core of the case is whether, under the Enbridge Budget Amendment, sec. 59.70(25), Enbridge "carries" a particular type of insurance called "sudden and accidental" coverage, in which case, counties may not impose additional insurance requirements.

To overrule the insurance requirement, the majority decision had to reinvent what sudden and accidental, a legal term of art, means from what it previously stated it meant in its 1990 decision in the case of Just v. Land Reclamation. In that case, the Court specifically defined "sudden and accidental" to include coverage for accidents that continued for decades so long as they were "unexpected and unintended," which is very different from the usual understanding of "sudden".

It is undisputed that here Enbridge's insurance when the permit was issued did not include "sudden and accidental" coverage that included accidents extending for decades because it was "unexpected and unintended." Instead, its insurance was "time limited" coverage, which excluded coverage for accidents that were not discovered in 30 days.

That means, under the Court's 1990 decision, Enbridge's insurance was very different from "sudden and accidental" coverage, failing to cover accidents that extend for many years.

To overcome this fact, the Court took upon itself the task of reinterpreting what "sudden and accidental" means in this case to restore "sudden's" meaning to its normal understanding of quick and immediate.

This is a fatal flaw because this decision did not exist in 2015 when the Legislature enacted the Enbridge Budget Amendment, Just was the controlling law at that time.

Therefore, in 2015, sudden meant unexpected not quick, and Enbridge's insurance does not qualify under the Enbridge Budget Amendment.

Questions? Looking for an interview? Contact: Peter Anderson (608) 231-1100

###