



PRESS RELEASE
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**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 — Line 61 — through Dane County, making it the largest pipeline in the country. This request raised red flags because the company had recently, through its own gross negligence, caused the worst inland oil spill in U.S. history near Kalamazoo, Michigan, which cost \$1.2 billion to clean up. Regulators were so appalled by the company's incompetence that they compared its managers to "Keystone Kops."

Even though Line 61 posed serious risks to the people and the environment along its corridor, Dane County's Zoning and Land Regulation (ZLR) Committee did not seek to bar the expansion. Instead, after consulting with the country's leading risk manager, the ZLR took the mildest and most conservative approach to this threat: It required Enbridge to purchase just \$25 million in cleanup insurance. This requirement was imposed to protect taxpayers from being forced to bail out the company should Enbridge's next major accident happen in Dane County in the climate-constrained future when the fossil fuel industry is financially hobbled by renewable energy.

The \$35 billion company could have simply paid the \$60,000 premium for the insurance policy to protect taxpayers from any future disasters. Instead, records on file with the Wisconsin Ethics Commission reveal that Enbridge hired one of Wisconsin's most high-powered lobbyists to sneak an amendment through the 2015 state budget to override Dane County's reasonable insurance requirement. Enbridge swore to Wisconsin's courts that it had nothing to do with the amendment, even though the provision had application to no one else.

The Court of Appeals exhaustively reviewed the record. In a 48-page decision, the court concluded that even though the budget rider did pertain exclusively to Enbridge, the company could not qualify for its protections because the company's lobbyist had made critical drafting errors.

Enbridge then sought the support of Wisconsin Manufacturers & Commerce (WMC), which had contributed \$2.5 million to the election of one of the Supreme Court justices and \$.5 million to another, and had made known it would spend more against any challengers to right-wing ideologues on the court. Together, Enbridge and WMC sought high court review, and, today, they won a decision overturning Dane County's eminently reasonable insurance requirement.

350 Madison spokesperson Peter Anderson said, "Huge corporate campaign contributions now so dominate Supreme Court elections in Wisconsin, and the court's decisions so closely track big money's briefs — even when they completely ignore the facts of the case — that justice for the people of Wisconsin can no longer be secured." For details, see Technical Explanation (next page).

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

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The 350 Madison Climate Action Team is dedicated to achieving a just transition to a reduction in atmospheric CO₂ below 350 parts per million (ppm) by working locally in concert with a powerful global movement.

TECHNICAL DISCUSSION

The Walsh dissent in *Enbridge v. Dane Co.* (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 ([section 59.70\(25\) of the Wisconsin Statutes](#)), Enbridge “carries” a particular type of insurance called “sudden and accidental” coverage, in which case a county 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, departing from what the court had stated the term meant in its 1990 decision in the case of *Just v. Land Reclamation* (155 Wis. 2d 737, 456 N.W.2d 570 (1990)). In that case, the court specifically defined *sudden and accidental* to include coverage for accidents that continue for decades so long as they are “unexpected and unintended,” which is very different from the usual understanding of *sudden*.

It is undisputed in *Enbridge v. Dane Co.* that at the time the permit was issued Enbridge’s insurance did not include sudden and accidental coverage for accidents extending for decades because they were “unexpected and unintended.” Instead, the company’s insurance was “time-limited” coverage, which excluded coverage for accidents not discovered within 30 days.

Thus, under the court’s 1990 decision in *Just*, 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 the meaning of *sudden and accidental* in this case, reverting to *sudden*’s “common, ordinary, and accepted” meaning of *quick and immediate*.

This is a fatal flaw because the current decision did not exist in 2015 when the Legislature enacted the Enbridge budget amendment. Rather, because *Just* was the controlling law at that time, *sudden* meant *unexpected*, not *quick*. Thus, Enbridge’s insurance does not include the coverage required to trigger the statute.