



CIVIL LIBERTIES  
DEFENSE CENTER

## Civil Liberties Defense Center

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March 20, 2018-- Statement of Lauren Regan, Civil Liberties Defense Center Attorney for Higgins.

On behalf of our client Leonard Higgins, we want to begin by thanking your honor, court staff, and the district attorney for their time and professionalism with regard to this case. It is not very often that a district court is asked to engage in a political trial, let alone a case that asks the court to permit evidence that a defendants actions were justified in order to halt or hinder catastrophic climate change from irrevocably destroying the planet, but it the fair adjudication of cases like this that historically advance our society, and create national debate. They are the cases that start in small courtrooms like this one and ultimately make it into the history books like the often-compared case of *TN v. John Scopes*, also known as the Scopes monkey trial—the original trial took place in little courthouse like this one in Dayton, TN, regarding whether a teacher could be prosecuted for teaching human evolution in school which was a crime at the time; other cases include the Japanese internment of Americans, *Korematsu v. U.S.*, *Loving v. Virginia*—criminalizing bi-racial marriage, *Roe v. Wade* reproductive rights, and many more. In each of these cases, people were convicted of crimes and only later did history correct the errors of the judiciary.

The courts and the jury process play such an integral role in our functions of government and democracy, particularly like today, when those functions may be strained due to a political moment in history. Changing beliefs in society are often advanced through the legal system and all of us are have the upmost respect for the integrity of that legal process in society's debate and ultimate acceptance of new concepts including scientific ones like evolution or climate change.

An 8<sup>th</sup> circuit federal appellate judge eloquently ruled in *U.S. v. Kabat*,

“We must recognize that civil disobedience in various forms, used without violent acts against others, is engrained in our society and the moral correctness of political protestors' views has on occasion served to change and better our society. Civil disobedience has been prevalent throughout this nation's history extending from the Boston Tea Party and the signing of the Declaration of Independence, to the freeing of the slaves by operation of the underground railroad in the mid-1800's . . . In these circumstances, the courts in assessing punishment for violation of laws have ordinarily acted with a degree of restraint as to the severity of the punishment, recognizing that, although legally wrong, the offender may carry some moral justification for the disobedient acts.” *U.S. v. Kabat*, 797 F.2d 580, 601 (8th Cir. 1986) (Bright, J., dissenting).

Mr. Higgins is before this court today as a result of his attempt, his humble role as a single human being, to draw attention to the extremely urgent, scientifically dire factual situation that faces our planet and all of its inhabitants. And his attempt as a single human being to try and do something to ensure that the planet will survive for his grandchildren and great grandchildren and all children who may come after us. Many people, Mr. Higgins included, reflect on their lives and think about what their legacy will be to their family members and to society. Many of us look around at the suffering of other human beings, of animals, of the degradation caused by pollution, mining, climate change, and think about the regret or remorse we may feel about not having done something more to alleviate that suffering, that degradation in some way during our lifetimes.

It is through that lens that Mr. Higgins, a father, grandfather, a retired life-long government employee, would come to make the decision to symbolically turn off a tar sands pipeline valve in order to try and stop the continued exacerbation of global warming and the devastating consequences to living things. His motivations were not selfish, but selfless, he attempted to act out of the public interest, not to harm anyone. He was in Chouteau County to try and prevent catastrophic climate change that will eventually affect the good people of this county just as it is already impacting island nations, the Arctic, and coastal regions around the globe.

Mr. Higgins and I truly believe in a system of justice where a jury of your peers can deliberate on a person's political actions. And if given the ability to weigh the merits of Mr. Higgins actions through the lens of the necessity defense or justification defense, the doctrine that recognizes that "the law ought to promote the achievement of higher values at the expense of lesser values, and sometimes the greater good for society will be accomplished by violating the literal language of the criminal law." Wayne R LaFave Subst. Crim. L § 10.1 (2d2003).

If a jury of Mr. Higgins' peers were permitted to balance the harms in this case, the outcome may, or may not have ended differently. But, with that jury's verdict, Mr. Higgins and his lawyers stand before your honor to be sentenced.

In considering what would be a just and fair sentence for Mr. Higgins, it is only right that he be judged by his actions both at the time of this incident and throughout his life. Mr. Higgins is not a typical defendant in a felony criminal case—and it bears mentioning that if the simple value of the cut chains were used to determine the charges in this case, it would have been prosecuted as a simple misdemeanor case—it is only because of the zealous inflation of the alleged dollar amounts in this instance, that this act became a felony to begin with.

Mr. Higgins, at 65 years of age, has no prior felonies and only one prior minor protest arrest just a couple years ago. He is currently retired and is an active volunteer in his community, as well as an active father, grandfather, and partner. He is a responsible community member and active person of faith. Mr. Higgins was evaluated by Montana probation and parole to be of minimal risk of reoffending, and requires little to no

intervention according to the report. It is the role of the court to consider all of these factors and to judge this person in his entirety.

Incorporating sentencing memorandum but to highlight:

Pursuant to 46-18-101(2a) The court must provide a punishment commensurate with the nature and degree of harm caused by the offense and to hold the offender accountable.

In this case of symbolic nonviolent civil disobedience, where the valve was actually closed preventatively by the corporation causing a delay in the flow of tar sands oil for several hours, there was no damage or harm other than the cutting of 3 chains to get into the gate, and the accidental damage to the actuator plate. He was arrested peacefully, cooperated and has conducted himself with respect for the criminal justice system and with integrity and accountability.

Pursuant to 46-18-255(2b) incarceration is inappropriate in a case like this with a nonviolent offender with no prior felonies.

It is for all of these reasons that we ask your honor to consider the following proposed sentence for Leonard Higgins:

First: pursuant to 46-18-210 we ask the court to impose a deferred imposition of sentence and suspend the execution of any sentence imposed.

(2) one year probation and we motion this court for an order permitting an interstate compact transfer of that probation to Oregon where he resides.

(3) Pursuant to 46-18-101(3b) punishment should be commensurate with the punishment imposed on other people who committed the same offense. In this case there were 4 locations where citizens like Higgins nonviolently caused the closure of pipeline valves, all of them charged with similar state felonies. His Washington state co-defendant Kenneth Ward, was previously sentenced to 240 hours CS, no probation, no jail, no fine, no restitution; we ask the court to impose 240 hours or less of community service hours for Mr. Higgins as well. This also complies with 46-18-101(3f) which states that sentencing must provide alternatives to imprisonment for nonviolent felons like LH.

(4) \$100 cost per 46-18-232(1)

(5) Pursuant to 46-18-225(2c) Mr. Higgins should be accountable for the actual damage he caused. Mr. Higgins has consistently acknowledged that he caused \$938 in damage to ENBRIDGE Inc. by cutting 3 chains and unintentionally damaging an actuator cover which was \$837.69 of that total amount and has stood ready to take responsibility for that actual damage caused by his political act. Prior to trial, Enbridge sent the prosecutor their total damages, which was about \$3755 for new chain and labor necessary to install that chain.

As of 2017 Enbridge worth \$69.3 billion; \$26.11 billion in sales, \$64 B in assets and \$1.56B in profits

No physical injuries

No psychological injuries

No employment/income affects

(1) Replacing damaged equipment/property: = 3 chains \$100.31, actuator cover \$837.69

They turned off valve themselves preventatively.

**Email from Mike Graham, Enbridge 11/17/17**

**“Here is the detailed information and totals”**

**Total (labor) \$2817.78**

**Actuator =838**

**Chain=100**

**Grand Total \$3755.78**

The costs to maintain the pipeline route “existed independently of the protest action,” and the wages paid to company employees were part of the employees’ normal salaries. The mere inconvenience of the protest did not amount to economic damages.

This type of shut down and start up is a normal part of pipeline operations and is a normal cost of doing business, no labor costs for regular conducted work. Many of the pipeline routes were already shut down and non-operational...it is contrary to the law that Enbridge and the State would seek restitution for their actions all around the US and Canada. This court does not have jurisdiction beyond this county—let alone Canada and the entire country.

Nor to re-start pipeline after **they** shut it down. If they were simply paid their normal salary for their job, the corporation cannot seek restitution of that amount from a defendant—especially in circumstances like those at bar. Employees driving the pipeline route to inspect valve sites is a normal part of their job; beyond the jurisdiction of this court, and not a reasonable result of this incident such that it should be accredited to LH.

(6) We are not proposing a fine, but if the Court imposes one, we ask pursuant to 46-18-201(3b) that in lieu of a fine, the court permit Mr. Higgins to make donations of food to the local food bank instead.

We ask this Court to follow the recommendations set forth by the defense. We believe this outcome provides the “degree of restraint” recommended by the federal court as to the severity of the punishment, and recognizes that, although legally wrong, Mr. Higgins carried a moral justification for the disobedient act that he now stands before this Court to take responsibility for.