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Lyn Fulwider Benavides, Attorney-at-Law

April 11, 2001

Senator Scott Fitzgerald
P.O. Box 7882
Madison, WI 53707-7882

Representative David Ward
P.O. Box 8952
Madison, WI 53707-8953

Re: State Public Defender Budget

Dear Senator Fitzgerald and Representative Ward,

I urge you to actively support **exempting** the State Public Defender from any base budget cut and tying the State Public Defender private attorney compensation rate to Supreme Court Rule 81.02(1).

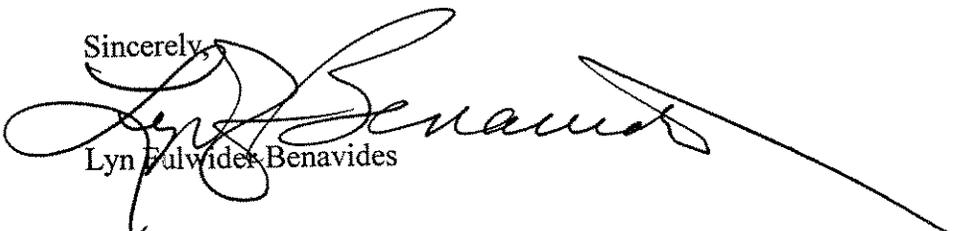
I am a Small Business Owner. I have my own law office and practice with my husband in Madison. We are parents of nine children ages 12 to 28 yrs of age: three are still in public school in Columbus, and three are in college or graduate school. As owners of a small business, we are responsible for all our business overhead, our own health insurance, and our own retirement in addition to supporting our family. We pay taxes and are property owners. We are Republicans and are pro-life. We are both attorneys. We both take SPD private bar cases. We have been residents of Wisconsin since 1973, and residents of Columbus since 1984. Eight of our children were born in Madison, WI.

The base budget cut proposed would make it impossible for our office to continue to take cases from the State Public Defender. A 5% base budget cut to the SPD could result in a further reduction to the already inadequate compensation rate to private attorneys. No other small business is required to lose money when doing work for a state agency. No other small business is required to wait up to a year before getting paid for doing work for the state.

In a very short time the added costs to the citizens and taxpayers of Wisconsin would more than erase any savings the Legislature may now think would result from the base budget cut to the State Public Defenders Office. The resulting costs would not only eat-up any savings but would almost double the cost to Wisconsin taxpayers.

I have supported the Republican party and all the candidates in every election. I am an active, voting citizen. But the proposed base budget cut to the Office of the State Public Defender is not good fiscal policy, and I cannot support it. I will be contacting you in the future to find out the status of this budget item. Thank you for your anticipated support, courage and work on this issue.

Sincerely,


Lyn Fulwider Benavides

4946 Goldfinch Drive
Madison, WI 53714

March 23, 2001

Senator Chuck Chvala
P.O. Box 7882
Madison, WI 53707-7882

Representative Mark Miller
P.O. Box 8953
Madison, WI 53707-8953

Re: State Public Defender Budget

Dear Senator Chvala and Representative Miller:

As your constituent, I urge you to actively support exempting the State Public Defender from the proposed 5% budget cut and increasing the private attorney compensation for SPD cases.

I am a single parent of three children – Joshua, a senior at LaFollette preparing to enter college; Rhiannon, a freshman at LaFollette; and Christopher, an eighth-grader at Cherokee Middle School. I am employed by the State Public Defender as a staff attorney. As such, I am well aware of the consequences of the proposed budget on my agency, myself and my family.

The proposed 5% budget cut is fiscally unsound and deleterious to Wisconsin's justice system. The Department of Administration put the cut in the agency's Trial Division. As such, the only way to come up with the requisite 5% in funds would be to lay off 50 staff attorneys. I could be one of those attorneys. But, the cut's harmful ramifications exceed the possible effect on myself and my family. The cases currently handled by those 50 staff attorneys would have to be assigned to private attorneys. Consequently, the SPD would have to spend \$5.9 million (payments to private attorneys) in order to save \$3.2 million (5% cut through staff layoffs). In other words, the proposed 5% budget cut would actually cost taxpayers an additional \$2.7 million. Moreover, there are simply not enough private attorneys willing to work on SPD cases to handle the present volume, let alone any increase in volume caused by staff layoffs. Consequently, the counties (i.e., property taxpayers) would have to suffer increased costs (e.g., court appointments of counsel, jail overcrowding, law enforcement overtime) due to increased court delays while the SPD searches for willing private attorneys to work on SPD cases. In sum, there is no sound basis in finance, management or reason for the proposed 5% budget cut.

Contrary to the proposed budget cut, there needs to be an increase in SPD funding to raise the meager private attorney compensation rate (\$40 per hour). Simply put, there are

not enough private attorneys willing to work on SPD cases. Significant staff time is consumed in searching for willing private attorneys. Court proceedings are delayed. Pre-disposition jail time is increased. Victims are burdened by postponed proceedings and prolonged cases. Defendants, victims and county taxpayers all suffer because we do not pay private attorneys a living wage for helping our state fulfill its constitutional mandate. The rate at which private attorneys can cover their basic overhead and bring a minimal wage home to support their families is identified in Supreme Court Rule 81.02(1) -- \$70 per hour. How can we expect these small, local businessmen and women to work for any less?

I welcome the opportunity to answer any question you may have. Thank you for your anticipated support.

Sincerely,



Rhoda J. Ricciardi

Cc: Governor Scott McCallum
Joint Finance Committee
State Public Defender Board

SCHWARTZ, TOFTE & NIELSEN, LTD.

ATTORNEYS & COUNSELORS

THOMAS P. TOFTE

CERTIFIED CIVIL LAW ADVOCATE

MARK F. NIELSEN

CERTIFIED CRIMINAL LAW ADVOCATE
CIRCUIT COURT COMMISSIONER

The Joint Committee on Finance
Public Hearing Site
University of Wisconsin at Parkside

Re: *Public Defender Issues*

Honorable Gentlemen & Ladies:

I apologize for not being able to attend today. I am writing in lieu of testifying because this morning I have to conduct a preliminary hearing in a First Degree Murder case. In order to be fairly tried, this case needs reasoned and correct decisions to be made on evidentiary privileges, DNA cold evidence issues as well as standard procedural issues. I look forward to clarifying the law on these points, but particularly because I am privately retained. I may not make much, but I won't lose money.

I used to take public defender appointments. I don't anymore. I cannot afford to. The rate paid for paid for public defender cases - \$40 an hour - is what we were paid 20 years ago. At that time it barely covered overhead. Now it represents slow bleeding on my bottom line.

I chose criminal law. I believe in this kind of work - I believe that what I do makes my hometown safer and more orderly. I like it that my kids can't be pulled over and roused just because they are teenagers or that my friend cannot be searched because he bought a house in a white neighborhood. I like it that my wife in an emergency can expect professional behavior from the police because the departments have been compelled to train their personnel.

However I am also in business. I have six employees, and they have kids too. I have to pay them a living wage. I also behave like a small businessman. I support local charities, I participate in non-profit organizations and I invest in my real estate and business capital.

I took SPD cases back in the late 70s and the 80s. I made a very little money but I got experience. As I went along, and as inflation visited us all, I had to stop taking these cases on a regular basis, since I could not deduct my donations to the public good and the losses (\$40 does not cover overhead) came out of my pocket. My wife expects me to feed and educate my kids, too, and I agree with her.

If there is anyone in the legislature who knows of any other professional service for which they can contract at 1980 wages, please let me know. I will sign up.

I understand that the executive branch is saying that they can cover cutting the SPD staff by private attorney appointments. This is the sort of solution that many of us have come to expect from the government. Let me tell you, we aren't going to take them. We are losing money now. This is the old joke - we aren't going to try to make up the fact that overhead exceeds pay by going for volume.

Perhaps you can cut staff by going to "contracting." However, please remember that the SPD tried contracting five years ago and it was a disaster everywhere but Milwaukee. In Racine, we ended up with a bunch of unfortunate recent law school grads who had no idea of what they were doing and who, in a few celebrated cases, entered into plea agreements with the DA before they had even met the clients. The judges and bar basically ran them out of town as disgraces to the idea of the Sixth Amendment and in an effort to prevent every conviction from being overturned due to the incompetence of counsel.

I am sorry to be strident. I generally find this attitude to be unpersuasive. However, I find myself too appalled to be coy. Instead I am being honest. If you cut the staff, you will lose money because appointment of even the lawyers who'll work for \$40 an hour will cost you more than staff representation. If you stick with the \$40 per hour private bar rate, you will find that you will (1) transfer costs to local counties in terms of lengthened incarcerations and (2) not cover the State shortfall due to increased private bar expenses and (3) that you will be providing representation at less than the mandated Sixth Amendment standard. That poor representation will in turn cost the public on vacated sentences and litigation of Sixth Amendment issues.

I may not have learned a lot about legal scholarship in 20 years in this business, but from hard small business experience I have learned to add and subtract on a spreadsheet.

The governor's proposal to reduce SPD staff and to leave private bar rates at 1980 levels will present you with a crisis of very expensive proportions in the next budget session. You have a scheme of compensation that has been under a clattering lid for twenty years, and the current proposal is to turn up the heat and tighten the lid. The numbers may look nice on a piece of paper, but when they get out into the real world, they will fall apart.

Sincerely,

SCHWARTZ, TOFTE & NIELSEN, LTD.

Mark F. Nielsen

Submitted by: Jo Ann Kessler (608)
537 Morningstar
Madison, WI 241-2471
53704

During the 22 years I was employed as a deputy sheriff by Dane County, I became aware of the vital role that the Public Defender's Office plays in the criminal justice system on a personal and professional level. It is for that reason that I wish to address you, and to urge you to reconsider the proposed budget cuts to that office that you are considering today.

The vital part that the Public Defender's Office plays in protecting the rights of many of our Wisconsin citizens, particularly those who have no voice in a system that is almost always intimidating and overwhelming, was graphically illustrated to me when this office was no longer allowed, for monetary reasons, to represent parents in CHIPS proceedings.

When this occurred, I saw first hand the consequences of a cut in services from that office on a very human level. The toll was, and remains immeasurable. Parents in danger of losing their children, a loss that strikes the very core of what most of us value most highly on this earth, were thrust unarmed onto the legal battle field, with no help or advise from anywhere. They were almost to a person, confused and frightened. Many ended up agreeing to decisions they neither understood, nor would have sanctioned if they had.

As a juvenile court bailiff, I witnessed time and again the blatant unfairness of expecting those with no legal training, often limited education and resources, to struggle on their own through a complex legal maze, with the stakes being the custody of their children.

It became clear to me when this service was cut, how vital this link is in the criminal justice chain. If we as a state fail to keep the Office of the Public Defender strong and well-staffed, there will be NO justice for some.

The proposed budget cuts will undoubtedly have the affect on some level of compromising the quality of representation that some Wisconsin citizens receive.

Would you be comfortable having an attorney who had a work load that precluded reasonable representation defending your son , daughter or other loved one? With the proposed budget cuts, and resulting significantly smaller number of public defenders available to handle cases, this may be a reality for many families.

Finally, as a tax payer, I would like to have someone explain to me how cutting \$3 million from the budget, with the resulting loss of 50 staff attorneys who will need to be replaced by private bar attorney services at a cost of almost \$6 million dollars makes any fiscal sense.

The state of Wisconsin needs to accept that providing constitutional safe guards for all of its citizens comes with a price tag. Can we afford not to pay it? For all that we as a state and country hold to be true and fair and just, I believe we must be willing to fund at a reasonable level, the organization that protects the rights of all of our citizens.

While cutting the funds that protect those with the least influence and the smallest voice in our society may be EASIEST place to save tax dollars, it certainly is not the BEST place.

RESOLUTION

Dane Court Circuit Court

WHEREAS, SB 55.AB 144, the biennial budget bill, provides for a 5% reduction in the base appropriation for the Supreme Court/Director of State Courts and the Circuit Courts; and

WHEREAS, the circuit court appropriation is comprised of the salaries, per diems and expenses of circuit court judges, reserve judges, official court reporters and free-lance court reporters; and the Director of State Courts appropriation funds the salaries and expenses of the district court administrator offices; and

WHEREAS, a 5% reduction in the circuit court base would not allow for the use of reserve judges or free-lance court reporters to cover for sicknesses, substitutions or congested caseloads. Active circuit judges would also not be able to travel to neighboring counties within the district to assist when reserve judges could not, and

WHEREAS, the court system could not function without reserve judges. Unacceptable delays and backlogs in case processing would occur. If travel was prohibited it would severely hamper the District Court Administrator to assist the judges and staff of the 4 counties in District 5. If operating funds were cut it would reduce resources used to obtain, copy and distribute materials to judges and staff related to maintaining efficient systems, such as caseload management reports, descriptions of improved practices and explanations of new laws.

WHEREAS, the circuit judges of Dane County ask that the Joint Finance Committee consider the severe disruption that these base reductions will have upon victims, civil litigants and users of the juvenile and criminal justice system,

NOW, THEREFORE, BE IT RESOLVED, that the undersigned judges of Dane County ask the members of the Joint Finance Committee to remove the 5% reduction from the Circuit Court and Director of State Court's appropriations and restore them to their original bases

Hon John Albert, Circuit Court
Hon Steven Ebert, Circuit Court
Hon Diane Nicks, Circuit Court
Hon Moria Krueger, Circuit Court
Hon Patrick Fiedler, Circuit Court
Hon Gerald Nichol, Circuit Court
Hon Angela Bartell, Circuit Court
Hon Daniel Moeser, Circuit Court
Hon David Flanagan, Circuit Court
Hon Michael Nowakowski, Circuit Court
Hon Stuart Schwartz, Circuit Court
Hon Sarah O'Brien, Circuit Court
Hon Daniel Larocque, Reserve Judge

**RESOLUTION
OF THE
DANE COUNTY BAR ASSOCIATION**

WHEREAS, the Dane County Bar Association recognizes the constitutional requirement to provide legal representation for indigent criminals in criminal cases; and

WHEREAS, the Dane County Bar Association believes that competent representation for indigent defendants can most efficiently be provided by an organization such as the Office of the State Public Defender; and

WHEREAS, the Dane County Bar Association believes that a reduction in the current funding of the Office of State Public Defender would result in an even greater increase in expenditures required by the counties due to the constitutional requirements that counsel be provided for indigent defendants; and

WHEREAS, a reduction in the number of staff attorneys would result in an increased number of appointments of cases to private bar attorneys which in turn would result in an even greater cost for representation of indigent criminal defendants; and

WHEREAS, increased appointments to private bar attorneys would probably result in delays in the legal process due to the unwillingness of private bar attorneys to accept appointments to these cases due to the rate of compensation attorneys in these cases; and

WHEREAS, the current private bar rate for State Public Defender cases is \$40.00 an hour; and

WHEREAS, the Wisconsin Supreme Court rate codified in 1994 as Supreme Court Rule 81.02 is \$70.00 an hour; and

WHEREAS, the state average cost of overhead involved in defending a client is \$60.00 an hour; now therefore it is

RESOLVED that the Dane County Bar Association recommends that (1) the proposed reduction in funding for the Office of the State Public Defender be reconsidered; (2) that the funding for the Office of the State Public Defender be at least continued at its current level; and (3) that the private bar rate for private attorneys be increased to \$70 an hour.

Adopted unanimously by the Dane County Bar Association Board of Directors April 10, 2001.

STATEMENT TO JOINT COMMITTEE ON FINANCE REGARDING THE
GOVERNOR'S BUDGET RELATIVE TO CUTS IN THE OFFICE OF STATE
PUBLIC DEFENDER

The opinions expressed in this statement are solely those of the speaker/author. They do not represent the official position of any organization or governmental body.

I come today to express concern about the level of cuts proposed in the Governor's Budget relative to the Office of the State Public Defender.

Although the opinions expressed in this statement are solely mine and do not represent any official position of Dane County or any other organization, I do want to let you know that I am currently the Juvenile Court Administrator in Dane County. I have held that position since 1991 and have worked in one capacity or another in the Dane County Juvenile Court Program since 1974. Therefore, my comments relate to the role the Public Defender's Office plays in juvenile court.

Despite coming from a family that includes a number of attorneys and despite having a number of friends who are attorneys, I suppose there was a time in my over 26 years of experience in which I considered Public Defenders a necessary evil in the juvenile justice process.

For valid reasons, a new juvenile code took effect in 1996. While retaining most of the due process requirements of the court, the new code properly seeks to balance the interests of the community, victims, and offenders through a balanced approach to juvenile justice.

Now more than ever, Public Defender's are more than just "protectors" of due process for the juveniles.

No doubt you will be provided with other information about the fiscal aspects of the proposed budget; how the cuts may affect the fiscal operations and

staffing of the Public Defender's Office, how staff cuts may have to be made, and how reality suggests this really is not a cost savings at all.

I want to talk about how the system really works by focusing on two goals of the juvenile justice process: (1) Efficiency, and (2) Effectiveness and the Public Defender's role in meeting those goals.

Efficiency. There is absolutely no doubt in my mind that having well-trained, consistent, and experienced Public Defender's leads to a more **efficient** juvenile justice process. Their knowledge of how the system works, the people involved, and experience with juveniles is simply superior to what private bar, occasional practitioners in juvenile court will know. There is more to the process than simply appearing at a court hearing. Preparation before a court hearing, the ability to meet with offenders and their families, and the ability to talk with prosecutors and social workers all contribute to a more efficient and ultimately effective process.

Effectiveness. One aspect of an effective juvenile justice system is how the juvenile perceives the process, as the first step toward accepting responsibility for the harm they caused to others and accepting the outcome or consequences imposed upon them. For the offender, the only way they have input into the process is through their attorney. To the extent that they believe they were "heard", that the process was "fair", and they understand how the system works the more likely it is they will leave court in the frame of mind to complete their obligation and move forward. The experienced Public Defender has the ability to work with the juvenile offender to give them clear, up-to-date, and constructive advice about the options before them. Secondly, experienced Public Defenders can appropriately, and I emphasize appropriately, challenge the system to improve when it needs to be improved. They understand the context of the services offered, the needs of their clients, and they are able to contribute (both on a case by case

basis and on a system planning basis) to developing processes and services that are more likely to result in benefits to the community as well as their individual client.

Conclusion

There is much more that I could say about this issue. But, let me close with a question that I ask myself frequently.

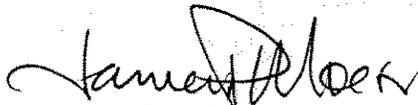
That question is "what would you want for my own child?"

In this case, if my child was the one who was going to juvenile court, would I want an experienced Public Defender who works in juvenile court day in and day out to represent my child, OR would I want a less experienced attorney whose private practice has more to do with family and civil law? Would I want a Public Defender who has time to meet with my and family ahead of time, to learn more about my child, and is knowledgeable about services, OR would I want an attorney who doesn't have the "extra" time to meet with us ahead of court and is just one more part of an "assembly line" process to move cases through the system?

I would urge you to put yourself in this position and ask yourself what you would want for your child. This is an easy decision if the decision you make affects only other people's children. Perhaps we will all be lucky enough not to have to face this issue for our own children. But, do the others deserve less than you would want for yourselves?

Thank you for your time and consideration.

Presented by:



James P. Moeser

Dane County Juvenile Court Administrator

The opinions expressed in this statement are solely those of the speaker/author. They do not represent the official position of any organization or governmental body.



**STATE BAR
of WISCONSIN®**

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Madison, WI 53707-7158

2001-02 BUDGET OVERVIEW
STATE BAR OF WISCONSIN/SECTION POSITIONS

PROVISION	GOVERNOR'S BUDGET	STATE BAR/SECTION POSITION
Civil Legal Services	No provision.	The State Bar of Wisconsin strongly supports the inclusion of funding for civil legal services into the budget.
State Public Defender Office	<ul style="list-style-type: none"> • Agency budget cut by 5% in budget; • Private bar rate increases— No provision. 	The State Bar of Wisconsin and Criminal Law Section support increasing budget funding for the SPD and for private bar rates.
Court Interpreters	Supreme Court agency request which was not fully funded.	Fully funded request supported by State Bar of Wisconsin .
Judicial Council	No provision.	The State Bar of Wisconsin supports funding of the Judicial Council.
Court Funding	Budget appropriations for the courts at all levels cut by 5%.	The State Bar of Wisconsin supports sufficient funding for the court system.
Truth in Sentencing Provisions	Provisions include the elements of last session's truth in sentencing bill.	The Criminal Law Section of the State Bar of Wisconsin supports the provisions currently in the budget, but it believes all of the Criminal Penalties Study Commission should be adopted.
DNA Provisions	Provides funding for adequate prosecution of serious sex crimes through the use and maintenance of DNA evidence.	The Criminal Law Section of the State Bar of Wisconsin supports use of DNA evidence in extending the statute of limitations in cases of first and second-degree sexual assault.

Estate Recovery Program	DHFS-Medical Assistance provisions	The Elder Law Section of the State Bar of Wisconsin opposes extension of the estate recovery program.
Community Options Funding (COP)	DHFS provisions	The Elder Law Section of the State Bar of Wisconsin supports adequate funding for COP and related programs.

Civil Legal Services - The State Bar of Wisconsin strongly supports state funding of civil legal services for low-income individuals. Last session, the Joint Finance Committee provided \$200,000 from the federal welfare block grant for civil legal services and poverty firms across the state were able to serve 700 families' legal needs. A continuation of that appropriation was not included in the 2001-02 budget.

In order to provide access to justice for all individuals regardless of income, the State Bar of Wisconsin is asking for \$500,000 General Purpose Revenue for civil legal services. Wisconsin is one of only a handful of states that does not provide any state revenue for this purpose—it helps prevent homelessness, gets women and children out of violent family situations and helps protect senior citizens from fraud.

Office of The State Public Defender – The State Bar of Wisconsin and its Criminal Law Section support adequate funding of the Office of the State Public Defender. The budget reduces the appropriation for the State Public Defender (SPD) by \$3.2 million (a 5% cut), which will mean the elimination of SPD attorney positions, lengthy delays in payments, and possibly a further reduction of the assigned counsel rate. All Americans are afforded the right to counsel under the 6th Amendment to the US Constitution and the State cannot abrogate its constitutional duty to provide for this representation. If the SPD is not funded appropriately, the cost of representation then falls onto the counties, who are equally strapped in their budgets.

The budget also excludes the requested, and long overdue, increase in the private bar rate from the current \$40.00 per hour to \$70.00. This is the rate held to be reasonable by the Wisconsin Supreme Court and codified in Supreme Court Rule 81.02. This rate has received only a minimal increase in 22 years.

Court Interpreters – The State Bar of Wisconsin supports providing funding for court interpreters in the court system. This is a priority for the Supreme Court. In their budget request they asked for \$2 million in funding for a court interpreter program. The Governor's budget bill only provided \$500,000 for interpreters and did not establish the program as requested by the Supreme Court. The goal of the court interpreter program is to increase funding and rates for interpreters, create a certification program for court interpreters and establish an educational program so that interpreters understand court procedures, terms and processes. The State Bar of Wisconsin supports providing the financial resources to ensure that court interpreters are available to those

citizens in need and that a coherent and effective court interpreter program is available across the state.

Court System Funding – The State Bar of Wisconsin strongly supports sufficient funding for the third branch of government—the Judiciary. The current budget reduces the appropriation for the various levels of the courts system by 5%. For the Supreme Court, the 5% budget cut is \$212,000, equivalent to the court's budget for travel, maintenance, printing, postage, telecommunications, electronic research and insurance. For the Circuit Courts, the 5% cut equals a \$2.7 million to the appropriation which is used currently for salaries, fringe benefits and the like for circuit court judges. Cutting that appropriation by \$2.7 million will be a direct cut to salaries of individuals who are essential to the effective operations of the circuit courts, including reserve judges and free-lance court reporters. For the Court of Appeals, the 5% budget amounts to a reduction of \$400,000 and represents the entire supplies and expenses budget of the court (other than rent and travel). In other words, the Court of Appeals will have no budget for postage, printing, telephone, electricity, insurance, electronic research, maintenance and the like.

Judicial Council – The State Bar of Wisconsin supports funding (\$200,000) and independence for the Judicial Council. The Judicial Council was created to assist the legislature and the courts in providing for a more effective and efficient court system. It has done so for decades at a very minimal cost to the state. However, during the 1995-96 budget the Judicial Council was combined with the Judicial Commission—a wholly different entity in both scope and purpose—and its budget and staff eliminated. The Judicial Council must be adequately funded or it will not be able to efficiently fulfill its statutory duties.

Truth in Sentencing – The Criminal Law Section of the State Bar of Wisconsin supports adoption of the Truth in Sentencing provisions in the budget. It also favors the findings in the Criminal Penalties Study Committee, which calls for further trust and confidence in the probation and parole system and adequate funding for rehabilitation programs. The Criminal Law Section also believes that a limited form of judicial modification should be made available as an incentive to rehabilitation.

DNA Evidence – The Criminal Law Section of the State Bar of Wisconsin supports budget provisions that would provide further funding for DNA crime lab personnel and the extension of the statute of limitation when DNA evidence is available. The Criminal Law Section also supports language that would allow for postconviction testing of DNA evidence.

Medical Assistance—Estate Recovery Program – The Elder Law Section of the State Bar of Wisconsin opposes the expansion of the estate recovery program as proposed in the budget. The opposition is three-fold. First, the Section opposes extending the program to all MA services provided to individuals over age 55. Second, the Section opposes extending estate recovery to PACE and Partnership program participants and opposes recovering money from PACE/Partnership participants at a capitated rate (as

opposed to recovering the actual cost of those services). Third, the Section opposes allowing for the extension of estate recovery liens to non-homestead property.

COP Funding – The Elder Law Section of the State Bar of Wisconsin supports adequate funding for the Community Options Program and related programs.

For additional information please contact Linda Barth at 608-250-6140, Jenny Boese at 608-250-6045 or Cory Mason at 608-250-6128.

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Madison-area Urban Ministry

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STANDING WITH THE HURTING OF DANE COUNTY, PLANTING THE SEEDS OF SOCIAL CHANGE

My name is Greg Rosenberg, and I am Project Coordinator with the Wisconsin Prisoner Awareness Coalition. The Coalition is made up of organizations around the state advocating for improved conditions for Wisconsin's incarcerated citizens. Given the potential impact that the proposed budget cuts could have on the number of persons incarcerated in Wisconsin, I am here to speak in support of restoring funding to the Office of the State Public Defender.

If you believe that at least *some* poor people charged with a crime are innocent, then you have a moral, ethical, and constitutional obligation to provide them with *good quality* legal representation. The Governor's proposed budget, if adopted, sends the message that poor people charged with a crime in Wisconsin, guilty or innocent, are entitled only to *mediocre* representation.

What kind of effect will the budget cuts have on the State Public Defender? First, all public defenders hired since 1995 are at great risk of losing their jobs – it's the old "last hired, first fired" that we all know so well. Having gone to UW Law School with a number of them, I know firsthand that we would be losing a group of talented and committed attorneys. Some offices with disproportionate numbers of young attorneys, such as Racine, could be decimated by layoffs.

Caseloads for the remaining attorneys will go up – and caseloads already exceed the national standards for public defender caseloads. And what does it mean when an attorney's caseload goes up? Simply put, it means more plea agreements -- there will not be the time to take these new cases to trial, *even where defendants are likely innocent.*

We know that some innocent persons are convicted and sent to prison – the large number of death penalty convictions that have been overturned across the country based on DNA testing confirms that reality. In fact, the Innocence Project right here at the UW Law School recently made national news for overturning a wrongful conviction through the use of DNA technology.

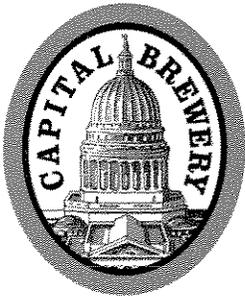
No system is perfect, including Wisconsin's criminal justice system. Sometimes witnesses are mistaken, sometimes experts make mistakes, sometimes police or prosecutors cut a few corners in their zeal to gain a conviction.

The stability and credibility of our criminal justice system depends on all criminal defendants receiving a *zealous defense* – it is an essential part of our time-honored system of checks and balances. It has been a fundamental part of the Wisconsin Way for many years.

In your deliberations to achieve a balanced budget, please do not forget your constitutional obligation to maintain a fair and healthy criminal justice system. Thank you for your time and consideration.

MUM





CAPITAL BREWERY COMPANY, INC.

America's #1 Rated Brewery
1998 BTI World Beer Championships

Senator Brian Burke
Co-Chairman for the Joint Committee on Finance
P.O. Box 7882
Madison, WI 53707

Dear Senator Burke,

April 11, 2001

I am writing this letter as a concerned executive for a small Wisconsin Brewery. There are some strong concerns throughout the Wisconsin brewing industry that Miller Brewing Company is trying to change existing beer regulation laws. These proposed changes would greatly detour and thwart the growth of Wisconsin's fast growing super-premium beer industry.

Through reliable information, we believe that these law changes may appear in the 2001 Budget Bill, that your committee will be reviewing. Capital Brewery and the forty-six members of the entire Wisconsin Brewers Guild believe that any proposed changes to Wisconsin Beer Statutes are policy issues, **not budget issues**, and should not appear as part of the 2001 Budget.

The existing Wisconsin State Statutes that may be proposed for change are:

- Inside Signs [Chapter **125.33 (2)(a)**]
- Inside/Outside Signs [Chapter **125.33 (2)(b)1.2.**]
- Entertainment [Chapter **125.33 (2)(n)2.**]

We believe that all of the existing beer State Statutes give the beer industry adequate flexibility to promote and develop our business.

Thank you for any considerations. If you would have any questions, please call me at Capital Brewery at your convenience.

Sincerely,

Thomas A. Fuchs
President

Wisconsin Brewers Guild Position On Proposed Changes to Tied House Law

Wisconsin's "Tied House Laws" have effectively governed the entire alcohol industry in the State of Wisconsin since 1932. Changes or "updates" to these regulatory laws are being proposed. If implemented, these changes will threaten the foundation of our industry. The original proposals were lead by The Miller Brewing Company and are now also being coordinated with the State Wholesalers Association and the Wisconsin Tavern League.

The Wisconsin Brewers Guild, represents thirty-two small breweries throughout the state of Wisconsin and strongly opposes using the budgetary process to make sweeping regulatory changes to our industry. We believe that it is of the utmost importance to listen to the voice of the entire industry, not just those with the greatest political influence to alter the process. In reviewing the proposal to "Update Tied House Laws", using the 2001 budgetary process as a vehicle, the Wisconsin Brewers Guild makes the following recommendations:

1.) Indoor Permanent Point of Sale:

Wisconsin Act 68 updated the current language for signage and point of sale in 1983. The maximum value was raised to \$150 and the reference to "signs" expanded to include clocks and menu boards. It also allowed brewers and wholesalers to provide tap handles and paper or cardboard signs, not subject to a maximum dollar amount.

This has been a major sticking point within our industry because there has been no real means of enforcement available to the Department of Revenue. Unless the wholesalers can find a way to work with the Department of Revenue and find a workable means of tracking, regulation of any dollar limitations is difficult, if not impossible.

Guild Recommendation:

Allow unlimited indoor signage of any material, not subject to a maximum dollar amount. In addition, retain the current language that defines temporary indoor signage.

2.) Entertainment of Class "B" Retailers:

This Statute, updated in 1981, allows a brewer to spend up to \$75 per day to entertain a Class "B" account. Allowing expenditures on accounts greatly increases the possibility of brewer influence and further erodes Wisconsin's three-tier system. The original goal of these laws was to extinguish the influence of large brewers on Class B licenses.

Guild Recommendation:

We question the feasibility of creating a statute to allow expenditures on accounts, with out any means or ability to effectively track, monitor or enforce those expenditures.

The Wisconsin Brewers Guild would resolve to compromise by raising the expenditure limitation to stay with inflation to \$150 per day. In addition we urge the Department of Revenue to create a system to properly monitor, track and enforce the agreed upon limitations, including a \$10,000 fine or imprisonment of not more than two years or both, for continued violations.

3.) Indoor Temporary POS and Sign:

Additional changes to Wisconsin State Law are redundant after being addressed by the proposed changes in point 1.

However to reiterate, Wisconsin Act 68 updated the current language for signage and point of sale in 1983. The maximum value was changed to \$150 and the reference to "signs" expanded to include clocks and menu boards. It also allowed brewers and wholesalers to provide taps handles and paper or cardboard signs, not subject to a maximum dollar amount.

With no real means of enforcement available to the Department of Revenue regulation of any dollar limitations is difficult, if not impossible.

Guild Recommendation:

Allow unlimited indoor signage not subject to a maximum dollar amount. Concurrently, retain the current language that defines temporary indoor signage.

4.) On Premise Activity by Brewer or Wholesaler:

We view this proposal as a means to create a new legal avenue to contribute things of value including advertising and promotions to Class "B" taverns.

Again, we question the feasibility of allowing advertising to be paid for by Brewers and Wholesalers with no means for the enforcement agencies to monitor or track the expenditures.

In 1998, SB360 was proposed to allow contribution of things of value, by Senator Breske and was fought through the joint efforts of the Wisconsin State Brewers Association, The Wisconsin Wholesale Beer Distributors Association and The Wisconsin Brewers Guild. Governor Thompson vetoed that bill in its entirety citing concerns over endangering Wisconsin's three-tier system.

7.) Conditional Sales:

The proposed changes would allow millions of dollars to be given by brewers and wholesalers directly to retailers tax-free.

2,500.00	- for signage & gifts (no limits)
+ 500.00	- entertainment (daily no limits)
3,000.00	
x 4,200	- tavern league members
12.6 million	non-taxed dollars per brewery or wholesaler

This figure only includes Tavern League members; it does not touch on the many unaffiliated Class B licenses throughout the state. The proposed conditional sales provision would, in theory, prohibit a retailer from predicating a purchase on the receipt of any gifts.

Guild Recommendation:

Wisconsin Statue 125.33 reads - Restrictions on dealings between brewers, wholesalers and retailer. (1) Furnishing Things of Value. No brewer or wholesaler may furnish, give, lend, lease or sell any furniture, fixtures, fittings, equipment, money or other things of value to any campus or Class "B" licensee or permittee. We would recommend against any unnecessary changes to the current Wisconsin Law.

8.) Sale Without Retail License:

Apparently, this proposal would have you believe that the Department of Revenue has forgotten to require persons with an intent to sell alcohol be required to obtain a license or permit.

Wisconsin Statute 125.66. (1) No person may sell, or possess with intent to sell, intoxicating liquor unless that person holds the appropriate license or permit. Whoever violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

Guild Recommendation:

We think the Wisconsin Statue addresses this issue adequately and there is no need to make unnecessary changes.

Addressing the Honorable Members of the Senate, April 30, 1998, Thompson stated, "Contributions allowed under this provision could result in a "tied" relationship between a brewer and/or wholesaler. Small brewers and distributors should compete in the marketplace based on their products and service, not on the amount of assets they are able to contribute... in order to be represented."

Guild Recommendation:

We do not support any changes in allowable on-premise activities by brewers or wholesalers. We urge the creation of a means to track and enforce current statutes. We recommend coordination of this effort with the Department of Revenue including penalties and fines for violations and violators.

5.) Retail License Transfer:

This proposal would create protection for wholesalers from any financial loss due to a tavern owner discontinuing business leaving behind outstanding debts to wholesalers.

Guild Recommendation:

Current law provides 15-day payment terms to licensees from Wholesalers. We are not aware of any problems encountered by wholesalers but would agree to support the opinions of the wholesalers as long as they are in line with able enforcement by the Department of Revenue.

6.) Mail Order Beer Sales:

Currently, mail order beer sales are illegal. Shipping beer to a consumer is currently prohibited by 125.30(1) Wisconsin Statutes.

Although currently illegal, there is no means of enforcing the laws in regard to the shipment of beer by mail. E-commerce is becoming increasingly important to the Wisconsin economy. Prohibiting sales is a clear violation of free trade.

Guild Recommendation:

We would recommend reciprocity with the 14 other states that allow the shipment of fermented beverages, utilizing the common practice of requiring an adult signature for delivery. Wisconsin retailers, wholesalers and brewers currently pay taxes in a responsible manner and we would suggest that Wisconsin sales tax be paid on all shipments both in and out of the state. Thus creating additional tax revenue for the State of Wisconsin. The means to track sales tax payments, and penalties for non-payment already exist. We would also agree that mail order shipments must be directly to adult consumers in limited quantities and not for resale purposes.

9.) Compensation for Loss Of Brand:

Anytime a brewer must replace a wholesaler whether due to the wholesaler's failure to fulfill contractual obligations or even the wholesaler going out of business or death, the brewer is obligated to pay the wholesaler for changing to a new wholesaler.

Guild Recommendation:

We have successfully opposed this perennial issue since its first attempted introduction to the budget in 1997 and the subsequent SB Bill 444 in 1998.

Mandatory compensation for loss of brand violates the spirit of free trade. Wisconsin Wholesalers already enjoy the protection of Wisconsin's Fair Dealership Law. Substantial loss of business without just cause or due equitable compensation is already the protected right of all Wisconsin Wholesalers. We question the necessity of duplicate legislation. We seek to protect our right to independently initiate, negotiate and terminate agreements with the wholesalers of our products. If the relationship between a brewery and wholesaler is unacceptable, it should be the responsibility of those parties, negotiating between themselves, to determine the destiny of that particular relationship.

We oppose mandatory compensation for loss of brand as written.

10.) Retailer Association Membership:

Wisconsin Statute 125.33 allows only large brewers to join the local tavern leagues.

Guild Recommendation:

It goes without saying that membership in national or statewide trade associations should be allowed to all wholesalers and breweries. The current banning of small breweries from such memberships is completely discriminatory and should be changed.

11.) WEB Based Server Training:

Currently, employees of the Wisconsin Department of Revenue and approved instructors, utilizing a classroom setting, effectively give responsible beverage server training courses.

Guild Recommendation:

The guild remains neutral on this point. We would suggest that the positions of both the Department of Revenue and the Wisconsin Restaurant Association are heard and a compromise reached.

12.) Mail Order Sales of Wine:

Currently the State of Wisconsin exercises reciprocity with fourteen other states that allow the mail order type shipment of wine directly to adults. Shipping of product is a significant portion of the commerce for Wisconsin's small wineries. The Wisconsin Brewers Guild recognizes the historically responsible behavior of the Wisconsin Winery Association in not only their collective ability to pay state taxes in a timely fashion but also their continued efforts at promoting the healthy consumption of a Wisconsin Agricultural product.

Guild Recommendation:

The Wisconsin Brewers Guild recommends that the State of Wisconsin continue their policy of promoting Wisconsin Agricultural products by continuing to allow the mail order of wines as appropriate.

**WISCONSIN BREWERS GUILD
MEMBERSHIP LIST**

ANGELIC BREWING CO.
322 W. JOHNSON
MADISON, WI 53703

BREWMASTER'S PUB
4017 80TH St.
KENOSHA, WI 53142

CAPITAL BREWING CO.
7734 TERRACE AVE
MIDDLETON, WI 53562

ENDEHOUSE BREWING CO.
1020 E. MAIN ST.
REEDSBURG, WI 53959

GRAY BREWING CO.
2424 W. COURT ST.
JANESVILLE, WI 53545

GREEN BAY BREWING CO.
5312 STEVE'S CHEESE RD.
DENMARK, WI 54208

JK SILVER BREWING
621 BAXTER DR.
MUKWONAGO, WI 53149

LAKEFRONT BREWING CO.
1872 N. COMMERCE
MILWAUKEE, WI 53212

NEW GLARUS BREWING CO.
COUNTY RD. W, & HIGHWAY 69
NEW GLARUS, WI 53574

PIONEER BREWING CO.
320 S. PIERCE
BLACK RIVER FALLS, WI 54615

REMINGTON, WATSON & SMITH
223 MAPLE AVE.
WAUKESHA, WI 53186

SLAB CITY BREWING CO.
W5390 PIT LANE
BONDUEL, WI 54107

SPRECHER BREWING CO.
701 W. GLENDALE AVE.
GLENDALE, WI 53209

APPLETON BREWING CO.
1004 S. OLD ONEIDA
APPLETON, WI 54915

BREWMASTER'S PUB
1170 22ND AVE.
KENSOKA, WI 53142

CENTRAL WATER BREWING CO.
701 MAIN
JUNCTION CITY, WI 54443

FOX RIVER BREWING CO.
1501 ARBORETUM DR.
OSHKOSH, WI 54901

GREAT DANE PUB AND BREWING CO.
123 E. DOTY ST.
MADISON, WI 53703

HARBOR CITY BREWING CO.
535 W. GRAND AVE.
PORT WASHINGTON, WI 53074

J. T. WHITNEY'S BREWPUB
674 S. WHITNEY RD.
MADISON, WI 53711

MILWAUKEE ALE HOUSE
10518 HWY 60
CEDARBURG, WI 53012

NORTHWOODS BREWING CO.
3560 OAKWOOD MALL DR.
EAU CLAIRE, WI

RANDY'S FUN HUNTER RESTAURANT & BREWPUB
841 E. MILWAUKEE ST.
WHITEWATER, WI 53190

ROWLAND'S CALUMET BREWING CO.
25 N. MADISON
CHILTON, WI 53014

SOUTH SHORE BREWERY
400 3RD AVE. WEST
ASHLAND, WI 54806

TITLETOWN BREWING CO.
200 DOUSMAN ST.
GREEN BAY, WI 54303

WATER STREET BREWING CO.
1101 N. WATER ST.
MILWAUKEE, WI 53202

STEVENS POINT BREWERY
STEVENS POINT, WI

- | | | | |
|-----|--|---|---|
| 1. | Geno McKenna & Sons
Antigo WI | - | Geno McKenna
715-623-4788 |
| 2. | Doane Distributing
Ashland WI | - | John Doane
715-682-4443 |
| 3. | Beloit Beverage Co
Beloit WI
Brown Deer WI | - | Ralph & Brian Morello
414-362-5000 |
| 4. | G&F Distributing
Viroqua WI
Black River Falls WI | - | Corny Favor
608-637-2234 |
| 5. | Esser Distributing
Cross Plains WI | - | Wayne Esser
608-798-3911 |
| 6. | Lee Beverage Company
Eau Claire WI
Oshkosh WI | - | Dave Lindemar
920-235-1140 |
| 7. | Better Brands
Gerimantown WI | - | Jeff Miller
262-251-1770 |
| 8. | Kay Beer Distributing
DePere WI | - | Donna & Chip Kolocheski
920-336-2267 |
| 9. | Range Beverage Inc
Hurley WI | - | Greg Pisani
715-561-5337 |
| 10. | May Beverages
Kenosha WI | - | John Wavro
262-658-4121 |
| 11. | LaCrosse Beverage LLC
LaCrosse WI | - | Bruce Melby
608-781-2400 |
| 12. | Frank Beer Distributors
Middleton WI | - | Steve Frank
608-836-6000 |
| 13. | Hendricks Beverage
Manitowoc WI | - | John Hendricks
715-732-1600 |
| 14. | Jozaitis Dist. Co
Marinette WI | - | Wally Jozaitis
715-732-1600 |
| 15. | Stanley's Beer Depot
Marshfield WI | - | Robert Nowaczyk
715-384-8885 |
| 16. | Schneider Distributing
Merril WI | - | Ole Schneider
715-536-6711 |
| 17. | Bayside Distributing
Peshtigo WI | - | Ray Gansebom
715-582-4926 |

- | | | | |
|-----|--|---|--|
| 18. | Trausch Distributing
Prairie Du Chicn WI

Sparta WI | - | Jim Trausch
608-326-6451
Stan Gorius
608-269-5095 |
| 19. | Domanik Sales Company
Racine WI | - | Bob Domanik
262-681-2300 |
| 20. | H&H Distributing Co
Rhinelandcr WI | - | Gerry Percello
715-369-1321 |
| 21. | Jed's Distributing Co
Rhinelandcr WI | - | Jay Jackomino
715-362-2000 |
| 22. | Johnson Distributing
Steven's Point WI | - | Waync Johnson
715-344-7070 |
| 23. | Leamon Mercantile
Superior WI | - | Ken Clark
715-394-7227 |
| 24. | Zastrow the Beer Man
Wausau WI | - | Doug Zastrow
715-845-9255 |
| 25. | Joe Freund Dist
Fond du Lac WI | - | Joe Freund
920-921-2506 |
| 26. | Beer Central
Rice Lake WI | - | Steve Fischer
715-234-7896 |
| 27. | Zich & Son
Ladysmith WI | - | James Zich
715-532-3450 |
| 28. | Bertagnoli Distributing
Hurley WI | - | Jim Bertagnoli
715-561-3334 |
| 29. | Michaud Distributing
Superior WI | - | Butch Michaud
715-392-1500 |



Coors Brewing Company
Golden, Colorado 80401-0030

November 17, 2000

Mr. Thomas R. Sheforgen
Wisconsin Wholesale Beer Distributors Association
2805 East Washington Avenue
Madison, WI 53704-5197

Dear Tom:

I am writing in response to your request for information about Coors Brewing Company's position on proposed legislative changes to the Wisconsin tied house statutes, Chapter 125.33.

After reviewing the material with our Legal Department and Field Business Area, the company has come out in opposition to the proposed changes.

The first section we oppose concerns the promoting of a Class B licensee by the purchase of advertising through a third party, such as a radio station or media outlet. Since it is impractical to advertise all Class B licensees, we believe that this section would favor some retailers at the expense of others and may create an unfair market advantage.

The second section we oppose concerns an increase from \$150 to \$1,000 for retailer point-of-sale materials or consumer giveaways. We believe the \$1,000 threshold is too high.

Coors believes the proposed increase from \$75 to \$500 to provide tickets for retailers to an athletic event, concert or similar activity — including food and beverage expenses — is also too high.

Please let me know if you need further information about Coors' position on these three trade practice issues.

Sincerely,

Don W. Kawulok
State Government Affairs
High Plains Regional Manager

Cc: Al Auger
Linda Gawne
Steve Frank
Derrick Smigiel
Norm Cramer





PABST BREWING COMPANY

1721 MOON LAKE BOULEVARD, SUITE 205 • HOFFMAN ESTATES, ILLINOIS 60194
TEL: (847) 839-4259 FAX: (847) 839-4250

November 10, 2000

Mr. Tom Sheforgen
President
**WISCONSIN WHOLESALE BEER
DISTRIBUTORS ASSOCIATION, INC.**
2805 East Washington Avenue
Madison, Wisconsin 53704-5197

Dear Tom:

Sorry for the late reply to your August 16, 2000 letter.

After having discussed your proposed Tied House changes with our staff, field staff, and our wholesaler network in Wisconsin, we feel it would be in the best interest of the Pabst Brewing Company to oppose any changes to Wisconsin Tied House areas.

Thank you for keeping us informed.

Sincerely,

PABST BREWING COMPANY

A handwritten signature in black ink, appearing to read 'David S. Mahoney', written over a horizontal line.

David S. Mahoney
Vice President and
National Director of Sales

DSM/nlz

1. Coors Brewing Company
2. Pabst Brewing Company
3. Boston Beer Company
4. Barton Beers LTD
5. Becks North America
6. Gambrinus Company
7. Genesee Brewery
8. Guinness Bass Import Company
9. Heineken USA Inc.
10. Joseph Seagram & Son
11. LaBatt Importers
12. Latrobe Brewing Co
13. Mike's Hard Lemonade
14. Minnesota Brewing
15. Molson Breweries
16. Paulaner North America
17. Scottish & New Castle Importers
18. Sierra Nevada Brewing Company
19. Summit Brewing Company
20. Warsteiner Importers



2115 EVERGREEN ROAD • P.O. BOX 620710
MIDDLETON, WISCONSIN 53562-0710

My name is Steve Frank. I am president of Frank Beer Distributors, Middleton, Wisconsin. We are a wholesale distributor of many fine imported as well as domestic beers.

I come to you today in opposition to the proposed changes to sec. 125.33. These are the “tied-house” laws that have governed my industry since the repeal of prohibition. These laws have served our industry well, and have kept a level playing field against any abuses that might befall any of the three facets of our business, i.e. the brewer, the wholesaler, and the retailer.

Many of you have no understanding of what “tied-house” is, or what it is intended to do. For that matter, I am including as a handout a description or history of tied-house and what it is intended to do for my business. It is essentially a control – to keep a level playing field, so large interests do not control any one aspect of the industry. Please read it. It may give you some insights.

I am also here because I represent 25 to 30 beer wholesalers from the state. They hold grave concerns as to what these changes will mean to their business. I am providing to you a list of their names. A number of them have spoken directly to you, or have spoken before this committee as it has held its meetings around the state.

I am submitting to you two letters written by two major brewers who do business in the state and pay taxes on their product to the state of Wisconsin. With these letters, is a list of other importers and brewers, all of whom do business in this state and pay taxes to the

state for the products we sell. They all feel that the proposed changes to “tied-house” will uneven the balance of competition if they were to be enacted.

Most importantly, I am here to ask you to take this out of the budget, because it has no place being there. These are policy issues, which have nothing to do with budget. These are policy issues, which need discussion and debate in an open forum.

Additionally, let me say this. The people who want this law changed are big campaign contributors. The people who oppose it are not. This is an example of how policy decisions are driven by money and it's a great example of why we and you have to clean up the system of government in the state of Wisconsin.

Thank you

TIED-HOUSE

Prohibition was brought on largely by abuses in the pre-prohibition era in the distribution, sale and consumption of beverage alcohol. The prevention of a return of these abuses was, and continues to be, a major goal of government. This is reflected in the control laws and regulations that govern the industry.

Chief among the abuses of the distribution system in pre-prohibition times was the saloon as it then operated. Its image was disreputable. Much of the blame was ascribed to the fact that, in large part, the saloons were owned or operated by the brewers and distillers of that day. Most saloons, in effect, were exclusive outlets of absentee owners established under contract to sell exclusively the products of one manufacturer. All the pressures were for bigger sales and the absentee owner showed little regard for local laws, regulations or customs. As absentee owners, they were beyond local social influence.

When the public reaction against the intolerable conditions of prohibition ended with Repeal, there was almost universal agreement that there must be no return of the old-time saloon, the "tied-house" or other pre-prohibition evils.

"Tied-house" is a term that describes the control exercised by one person or company over the business activity of another person or company. This generally occurs when the seller controls to a degree or entirely the business activity of a retail outlet. This includes, for example, a brewer who is operating a chain of retail outlets.

This in turn places an obligation on the retailer to continue the purchase of the particular product from the wholesaler, further reducing the sales of the competing products in that particular market area.

The seriousness of this problem in the beverage industry was recognized by the Federal government in 1935, when federal law was enacted covering this problem. The federal law became effective on March 9, 1936.

Sec. 125.33, Wis. Stats. (as well as its predecessor as originally found in ch. 207, Laws of 1933) was designed to prevent the so-called "tied-house" relationships in the fermented malt beverage industry in the state of Wisconsin. The tied-house is a retail fermented malt beverage outlet in which a brewer or wholesaler of fermented malt beverages has a managerial interest or control. One of the outstanding features which characterize the development of state laws in the post-prohibition era was abolition of the tied-house system.

One of the curious facets of this ownership, for example, is that across from the Independent Brewery (no longer operating) the tavern premises was owned by Schlitz and featured only Schlitz beer on tap. This same situation was repeated throughout the city and apparently the owners of the breweries enjoy tied-housing a tavern near or across the street from their competition. Mr. Tom Gettleman remarked that his father considered it a successful year if he could "buy" a tavern from his competition.

As can be easily understood from the above, not only was the small brewery at the mercy of a larger competitor, but the retailer often was hurt in the process. The retailer could no longer sell the products that his patrons asked for; he was obliged to sell the products of the "owner". This in turn often caused a loss of business to the retailer, even to the point where he would have to close his business, often at a great personal loss to himself.

Wisconsin law restricts the ownership interests between brewers and Class "B" (on-sale) retailers. Sec. 125.31 allows a brewer to "maintain and operate a place on brewery premises and on a place on real estate owned by the brewer or a subsidiary or affiliate corporation or limited liability company for the sale of fermented malt beverages for which a Class "B" license is required for each place, but not more than 2 such Class "B" licenses shall be issued to any brewer" (emphasis added). "Brewery premises" means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business. Thus, the law greatly restricts the number of outlets a brewer may have control or ownerships over. The Attorney General has also ruled that the prohibitions contained in s. 125.33 prohibits a person from having interest in real estate leased to a Class "B" licensee, while also being a director, officer or shareholder of a brewer (77OAG76), citing this as an example of a prohibited "indirect interest."

A 1960 study reports that 34 states have statutes related to tied-house regulations. See Alcoholic Beverage Control, an official study by the Joint Committee of the States to Study Alcoholic Beverage Laws (1960) at page 35. The Attorney General has previously recognized that the 1933 Legislature endeavored to correct one of the evils of the pre-prohibition days, namely, the "tied-house" relationship. See 22 OAG 815 (1933).

A brief examination of the legislative history of "tied-house" laws reveals that such statutes were "designed to prevent or limit the control of retail liquor dealers by manufacturers, wholesalers, and importers." 45 Am. Jur. 2d, *Intoxicating Liquors* sec. 123. *Neel v. Texas Liquor Control Board*, 259 S.W. 2d 312, 316-317 (Tex. Civ. App. 1953), included in its opinion a particularly clear explanation of the purpose of "tied-house" legislation:

"We need not dwell upon the evils of the 'tied-house.' It is obvious that one result of such control could be the creation of a monopoly for certain brands of

liquors as well as dictating prices. The importance of preventing such control is reflected by a report of the United States Department of Commerce in 1941 titled State Liquor Legislation wherein on page 20 it is stated:

"The liquor control legislation enacted in the several states since the repeal of the Eighteenth Amendment to the Federal Constitution has uniformly attempted to prevent a recurrence of the evils that were prevalent before prohibition when the large liquor interest controlled, through vertical and horizontal integration, the productive and distributive channels of the industry."

"That our own State is in accord with this legislative policy see: Texas Liquor Control Board v. Continental Distilling Sales Co., Tex. Civ. App., 199 S.W. 2d 1009, 1014 ... where the Court in referring to various provisions of our regulatory statutes concluded that:

"The Legislature, in enacting the Texas Liquor Law ... expressly determined that the liquor traffic in this State would be best controlled by keeping the various levels of the liquor industry independent of each other ..."

"Tied-house" laws are designed to prevent the integration of retail and wholesale outlets, and to stop manufacturers, wholesalers and distributors from owning or controlling retail outlets. 48 C.J.S. *Intoxicating Liquors* §226 (1981). Historically, Wisconsin's liquor control laws have evinced a legislative intent that the fermented malt beverage industry be divided into three levels; the manufacturer, the distributor and the retailer. *State v. Kay Distributing Co., Inc.*, 110 Wis. 2d 29, 37, 327 N.W.2d 188 (Ct. app. 1982). Recognizing that there should be three levels in the fermented malt beverage industry, the legislature realized that a potential existed for abuses to this concept and therefore created the tied-house prohibitions.

The object and intent of Wisconsin's "tied-house" law is: To prevent manufacturers and wholesalers from acquiring complete or partial control of specific Class "B" retailers, directly by owning them or *indirectly by creating financial or moral obligations*. The purpose is clearly to assure the freest competition in the industry by preventing monopolistic practices and, to divorce *entirely* the wholesaler from the Class "B" retailer. Att'y Gen. 68, 69 (1972)(emphasis supplied).

Proof regarding a violation of 125.33(1)(a) does not require an actual showing of influence by a brewer or wholesaler upon the product choices of a retailer. Tied-house laws are specifically designed to alleviate the need for such a showing. That is why the Legislature broadly chose to bar the described relationships whether they exist directly or indirectly.

A wholesaler is prohibited from furnishing anything of value to a Class "B" retailer. "Furnished" is a very broad term which includes instances of mutual consideration as

well as gratuity. 44 OAG 91, 92 (1955). Another portion of sec. 125.33, Stats., provides that a brewer or wholesaler cannot provide anything of value " ... to any person for the use, benefit, or relief of any Class "B" licensee ..." A wholesaler who obtains a Class "B" retail license does so for the "benefit" of a Class "B" licensee since the obtaining establishes the retailer's existence.

Laws dealing with alcohol beverages are strictly construed against the licensee and it is not possible to extend such a law by implication. 38 OAG 540, 541 (1949). "The prohibition provision is a sweeping, all-inclusive one, subject only to the specific exceptions set forth." 40 OAG 84, 85 (1951). These exceptions which limit the scope of the enacting clause must be strictly construed. *Sutherland Statutory Construction*, (3rd Ed. 1943).

I applaud Governor McCallum for recognizing in his budget the importance of improving vehicle extrication training for rescue personnel in Wisconsin. However, it is my position we need to do more to address the needs of rescue personnel in the State of Wisconsin, not to mention the entire country.

Federal regulations and public demand has driven vehicle manufacturers to make changes and improvements in vehicle safety and design. Each model year, as vehicle technology advances, the methods to extricate victims has lagged further and further behind. The accident victims, as well as emergency responders, are being placed in jeopardy when untrained rescuers are utilizing improper tools and techniques to rescue patients from vehicles.

The current Wisconsin Administrative Code requires all firefighters be trained at the minimum standard of FF1. At this level vehicle extrication is never addressed. The current National Standard for EMT training and certification does not include extrication training. It's not only conceivable, but also highly likely, that rescuers with little or no training are performing extrication of accident victims.

The public assumes and expects firefighters and other rescue personnel to be trained in vehicle extrication. Vehicle extrication in Wisconsin is extremely deficient. As a citizen of this State, and a rescuer, I ask that Wisconsin implement an ongoing "state of the art" vehicle extrication program that includes research and development, keeps pace with the vehicle updates and tool changes, and offers an updated curriculum and comprehensive "Train the Trainer" program.

We are asking the Joint Finance Committee to support the efforts of State Representative Duff. To add to the budget a grant program that will provide funding for ongoing research and development, curriculum development and implementation of the "Train the Trainer" program to meet the needs of the rapidly changing vehicle designs, and to ensure for a **SAFE AND FAST EXTRICATION**.

The public is gravely concerned about the dangers on our roadways. The support of advanced extrication training is a step in achieving a higher level of safety on our roadways. We, the citizens, are entitled to, and demand, that we receive highly trained vehicle extrication technicians at the scene of an accident when seconds can mean the difference between life and death.



202 State Street
Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Members of the Joint Finance Committee
From: Joe Greco, President, League of Wisconsin Municipalities
Date: April 11, 2001

RE: Comments on the Governor's Executive Budget Bill (SB 55/AB 158)

Provisions We Support

- Increases in funding of state aid paid to municipalities to compensate for the tax base lost due to the personal property tax exemption for computers and related equipment. The budget bill increases funding by \$6,016,000 in 2001-02 and \$10,171,000 in 2002-03 to reflect growth in the value of exempt computers.
- Expansion of municipal authority to charge fees for services "that are available, regardless of whether the services are actually rendered...." Sec. 66.0627(2), Stats. (Section 2021 of the bill.)
- Restoration of municipal and circuit court judges' authority to suspend a juvenile's driver's license for failure to pay a forfeiture for non-traffic ordinance violations. Secs. 938.17(2)(d), 938.34(8) and 938.343(2), Stats. (Sections 3878 & 3894 of the bill.)
- Allowing municipalities to pay large property tax refunds to owners of manufacturing property in 5 annual installments and requiring the state to compensate municipalities for the interest on any such refunds paid by municipalities. Secs. 70.522(2)(br) and 70.511(2)(bm), Stats. (Sections 2117 & 2118 of the bill.)
- Changes recommended by the Brown Fields Study Group relating to the local government negotiation and cost recovery process and the local government liability exemption.
- Nonpoint source pollution abatement grants. (\$33.4 million in new GPR-supported general obligation bonding for grants to counties and municipalities for installation of nonpoint source pollution abatement practices.)
- Changes to funding formula for Tier B and Tier C mass transit systems (cities other than Madison and Milwaukee with transit systems) requiring that mass transit operating assistance payments be based on projected expenses for the calendar year rather than actual operating expenses from the second preceding calendar year.

Provisions We Oppose or Want Modified

- Level of funding for the shared revenue program reduced by \$6 million in 2002. However, the budget bill increases funding of the expenditure restraint program by \$6 million in 2002. So, statewide aid to municipalities in 2002 under the expenditure restraint program and the shared revenue programs equals the same amount paid to municipalities under these programs in 2001. Shared revenue funding has not been increased since 1995. Shared revenue programs should be increased by at least the rate of inflation in each year of the biennium.
- Funding for municipal recycling grants reduced by \$10.5 million in 2001-02 and \$11 million in 2002-03. The budget bill provides grant funding of \$14 million in 2001-02 and \$13.5 million in 2002-03. This compares to a current funding level of \$24 million. We need more funding for recycling.
- Under the Governor's proposed budget, municipal transportation needs would receive an inflationary increase over the next two years (i.e., general transportation aids to municipalities would increase by 5.0% in calendar year 2002 and 0.1% in 2003). However, state highway programs would receive a higher percentage increase (i.e., the major highway program would increase by 2.9% in year 2002 and 6.5% in 2003). The state should provide proportionate increases for local transportation needs. Also, the lack of planning for local needs in the past has produced major shifts in state transportation funding toward state highways at the expense of local programs. Local governments call for a multi-program, multi-modal 6 to 20 year local transportation investment plan.
- Changes to the process for selling a municipal utility plant. The budget bill eliminates the procedural steps that a municipality must follow, including the conducting of a referendum, before it can sell a public utility. Under the budget bill, a municipality may sell or lease any public utility plant it owns in any manner that it considers appropriate.
- Changes to 111.70, Stats., benefiting the Milwaukee police union. The Governor's budget authorizes an arbitrator to establish a system for conducting interrogations of members of the police department between 7:00 a.m. and 5:00 p.m. on working days (i.e., all days except Saturdays, Sundays and holidays), if the interrogations could lead to disciplinary action.
- Language authorizing the Department of Administration to prescribe and collect a fee for reviewing petitions for annexation of territory in populous counties. The fee is to be paid by the person filing the notice of the proposed annexation. (Section 255 of the bill.)
- Changes to the alcohol beverage licensing laws requiring municipalities to act as the debt collection agent for beer and liquor wholesalers. (Section 2800 of the bill.)
- Changes in how telephone company property is treated for property assessment and tax purposes. Under the budget bill, if more than 50% of a building is used for telephone company purposes, the entire building is assessed and taxed by the state.

Under current law, the state assesses and receives the tax revenue from only that portion of a building or lot that is used for telephone company purposes and the municipality assesses and taxes the rest.

Provisions We Want Added to the Budget

- Language exempting local governments from the state tax on motor vehicle fuel.
- Allowing general contractors to use municipal sales tax exemption certificate when purchasing material for public construction projects.
- Allowing municipalities to retain a portion of the property tax revenues paid by telephone companies to the state.
- Repeal of mandate requiring municipalities to impose a \$10,000 initial issuance fee for reserve "Class B" liquor licenses.
- Modify the definition of agricultural land for purposes of use value assessment relating to property taxation to exclude land that meets any of the following criteria: (a) it is less than 20 acres in size and is not contiguous to agricultural land owned by the same person; (b) it is platted or subdivided; (c) it generates less than \$2000 in gross farm profits resulting from agricultural use; and (d) is not zoned for agricultural use.

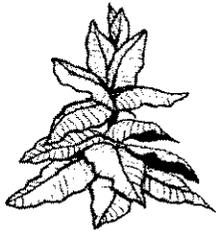
Questions We Have Concerning Modifications to the Shared Revenue Program

The Governor's Budget makes significant modifications to the shared revenue program. The budget bill replaces the aidable revenues component of shared revenue with a new aid distribution for municipalities named "aidable expenditure entitlements." The bill replaces the per capita component of shared revenue with a new aid distribution for municipalities named "growth-sharing regions entitlements." We submitted the following questions concerning the details of these changes to an Assembly Committee looking at these proposed changes.

1. To receive a payment from the growth-sharing region, a municipality must meet the budget limits contained in the expenditure restraint program. Those limits were designed for larger municipalities with local property tax rates over 5 mills. Staying within the limits also requires sophisticated, professional financial administration by local treasurers. Do we need to make the limits of the expenditure restraint program simpler and easier to follow before we expand the program from 200 large communities to all 1,850 cities, villages, and towns in Wisconsin?
2. The current expenditure restraint program requires a minimum local tax effort of 5 mills. The proposed growth-sharing payment requires no minimum local tax effort. The proposal would send sales-tax dollars even to communities that do not need to levy a local property tax. In order to qualify for a growth-sharing payment from the region, shouldn't a

community first be required to make a local tax effort at a modest level of 1, 2, or 3 mills?

3. The Governor recommended shifting the shared revenue program from “aidable revenues” to “aidable expenditures” in order to “focus aid on basic services.” Does the Governor’s list of “aidable expenditures” capture the right combination of basic services? The proposal encourages municipalities to spend more money on “general government operations” and other listed services and to spend less money on “culture”, “parks”, and “development”. Does the Legislature really want to encourage this change in priorities? Should spending on “economic development” be a priority for the state? Are “libraries” on the list of basic services or on the non-funded list?
4. Beginning in 2006, the proposal requires that municipalities enter into area cooperation compacts with at least 4 other jurisdictions “to provide law enforcement and to perform at least 5 of the other functions listed”, as a condition of receiving a growth-sharing payment. Does the provision require a full merger of five or more police departments into a unified metropolitan agency, or do mutual aid agreements between departments meet the definition? How do communities without their own police departments satisfy this requirement?



The Wisconsin Leaf Tobacco Dealers' and Growers' Association

Joint Committee on Finance
April 11, 2001
Testimony on SB 55 & AB 144

Wayne Farrington
Wis. Cooperative Tobacco Growers Association
&
Walley Olstad
Wis. Dealers & Growers Association

Thank you for providing us with the opportunity to testify on the 2001 – 03 Biennial State Budget Bill as it relates to tobacco farming in Wisconsin.

With the recent tobacco settlement providing hundreds of millions of dollars to the state annually, Wisconsin remains the only tobacco producing state that does not have a financial program to directly assist the tobacco farmer in these difficult times.

From 1997 to 1999 Wisconsin tobacco producing farmland dropped from 2,800 to 1,177 acres. In light of the state's tobacco cessation efforts it makes sense to compensate Wisconsin growers for reduced production.

The Wisconsin Cooperative Tobacco Growers Association would like to meet with you in February to discuss the establishment of a model \$3 million grant program based on average net income per acre for the grower, average rental income per acre for the owner.

With the Governor's proposed securitization of the tobacco settlement now is the time to help Wisconsin tobacco growers.

Thank you for giving us the opportunity to testify on the Biennial State Budget Bill.

Cazenovia Dam Project

Lee Lake, a formidable asset adjacent to the Cazenovia park system, and a central business district draw, is threatened by its deteriorating dam. The lake is a significant aesthetic as well as economic asset, and serves a large geographic base beyond Richland and Sauk counties with its annual events.

These events are:

1. Polar Bear plunge drawing in excess of 200 people.
2. Winter "fisherie" drawing approximately 120 people annually.
3. Summer Bass Tournament with about a dozen boat entries.
4. Year round boating, fishing, and swimming.
5. Hockey and broom ball.
6. Snow mobiling and 4/wheeling.

The community and sports minded citizens have planted 800 walleye per year in Lee Lake over the past 5-6 years. The Cazenovia community is very cognizant of the value the lake and adjacent park bares on their quality of life and economic impact.

The adjacent park is home of Weston High School baseball. Other park events include:

1. Caz Reds Baseball.
2. Caz Reds Home talent baseball.
3. Caz Reunion.
4. Caz Celebration
5. Jason Berberich Memorial Tournament.
6. Bob Schmitt baseball tournament.
7. Memorial Day weekend softball tournament.
8. Labor Day softball tournament.
9. Family camping and reunions.
10. Other special events.

Cazenovia businesses, which include a gas station convenience store, four restaurant/bars, and a small grocery store, all depend on this integrated recreational jewel in Northeastern Richland County.

Its citizens and extended community greatly appreciate the help which is sought to repair the Cazenovia Lee Lake Dam.

Frederick A. Baker



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**Testimony of Kerry Schumann,
Director of the Wisconsin Public Interest Research Group**

My name is Kerry Schumann, I am the Director of the Wisconsin Public Interest Research Group, or WISPIRG. WISPIRG is a nonpartisan, nonprofit organization dedicated to promoting democracy, protecting the environment and protecting consumers with about 15,000 citizen members across the state.

I would like to address several environmental issues within this budget.

First, WISPIRG strongly opposes tier 1 within the proposed Green Tier program. This "audit privilege" would prevent the state from taking action against a polluter who violates the law. This is perhaps one of the most absurd proposals within this entire budget. To put the proposal into perspective: imagine if a person who robbed you at gunpoint was protected from being prosecuted because he voluntarily turned himself in. Or, imagine that it was legal to drive drunk as long as you let the authorities know that you were driving drunk. In practice, that is what this outrageous proposal does. It takes away all enforcement for companies that agree to participate in the program. This proposal puts the health of the Wisconsin public and of our environment at risk by taking away the penalties for pollution.

WISPIRG opposes the entire Green Tier program overall, but is most concerned with tier 1.

Second, WISPIRG supports full funding of the state's recycling program. Wisconsin landfills will reach their capacity in just six years, forcing us to build new landfills. Landfills contaminate our groundwater, drinking water, and land. At the same time that we face this solid waste crisis, the Governor's budget proposes cutting the state's existing recycling program dramatically. Since Wisconsin's recycling law was implemented in 1990, Wisconsin residents have recycled 40% of their trash, reducing our need for additional landfills.

WISPIRG supports the continuation of the Wisconsin recycling program at funding and staffing levels requested by the DNR.

Third, WISPIRG supports funding for nonpoint source pollution programs. Almost 30 years ago, the federal Clean Water Act set a goal of making all of our waterways safe for fishing and swimming. Today, over 35% of our waters have still not met that goal. Runoff pollution from agriculture and urban areas is Wisconsin's largest source of water quality problems. In fact, in Wisconsin, runoff pollution affects 40% of our streams, 90% of our inland lakes, many Great Lakes coastal waters, and much of our groundwater.

WISPIRG supports funding nonpoint source pollution programs at levels requested by the DNR, at a minimum. Just as importantly, WISPIRG supports funding those programs from a dedicated source rather than through general purpose revenue. We ask that you return to funding these programs through the vehicle transfer fee.

Finally, WISPIRG supports a Family Farm Protection Act Amendment to the budget. An FFPA Amendment would aim to protect the environment while promoting family farming. It would include provisions such as funding a position in the Department of Justice to investigate and enforce anti-competitive practices in agriculture; increasing funding for the DATCP Agriculture Development and Diversification grant program; establishing a DATCP cost-share program for transition to managed intensive grazing and organic systems of livestock production; and providing cost share funding for state and federally required nutrient management plans.



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**Testimony of Scott Hagen,
representing the Wisconsin Public Interest Research Group**

My name is Scott Hagen. I am here representing the Wisconsin Public Interest Research Group, or WISPIRG. WISPIRG is a nonpartisan, nonprofit organization dedicated to promoting democracy, protecting the environment and protecting consumers with about 15,000 citizen members across the state.

I am here to comment on two different things in the state budget.

First, WISPIRG opposes any and all attempts to weaken Wisconsin's voting laws in the budget. Specifically, WISPIRG opposes:

- requiring photo identification to vote;
- all attempts to make same day voter registration more difficult;
- fining pollworkers for mistakes made at the polls;
- asking pollworkers to pay to attend training workshops.

Wisconsin's present electoral system is a model for other states. Our laws promote democracy and encourage voter participation. The attempts to "reform" voting laws in the budget run counter to our democratic process. These proposals are a misguided attempt to deal with concerns that arose in the November elections.

The largest challenge that Wisconsin faced in the November elections was that our system wasn't equipped to deal with high voter turnout. There are two ways to deal with this problem: make it more difficult to vote and deter many people from voting on election day, or improve the system so that it can handle higher voter turnout.

The proposal in this budget does the former. It makes the voting process more difficult and even prohibitive for some Wisconsinites. Requiring photo identification will prohibit access to voting for anyone who doesn't have a photo ID, and could particularly affect the elderly and urban residents who may not have a driver's license or other form of photo identification.

In order to make our system better able to handle high voter turnout, we need more individuals to work at the polls and we need to train those individuals better. However, proposals in this budget, if passed, would actually deter individuals from working at the polls. Who would want to work at the polls if they had to pay to attend a training and could be fined up to \$1,000 for making an error? These proposals are a powerful disincentive to becoming a pollworker.

The lesson that should be learned from the November elections is not how can we limit access to democracy, but how can we better enhance our voting systems? We should be looking at hiring more poll workers in preparation for high voter turnout. Perhaps the state should consider weekend voting, two day voting or mail-in voting. There are solutions to some of the problems we saw during this election that enhance access to democracy rather than limiting it.

I urge members of the committee to oppose any attempts to weaken voting laws and consider options to improve our electoral system. Wisconsin has a strong tradition of democracy. Let's keep it that way.

Second, WISPIRG is strongly opposed to provisions in this budget that take away the ability of the Department of Justice to commence action when consumer protection laws are violated. The Department of Justice's Office of Consumer Protection investigates and prosecutes violations of state consumer laws, including laws relating to deceptive advertising, credit, telecommunications, telemarketing and sales. By using litigation, the DOJ is able to both successfully enforce consumer protection laws against companies, and to ensure that consumers receive money for damages.

WISPIRG believes that eliminating the DOJ's Office of Consumer Protection would dramatically limit the enforcement of laws meant to protect Wisconsin's consumers. WISPIRG supports continuing to fully fund the DOJ Office of Consumer Protection in this budget.

Thank you for the opportunity to testify.