No. 12-0047

IN THE SUPREME COURT OF TEXAS

CARLA STRICKLAND,

Petitioner,

v.

KATHRYN AND JEREMY MEDLEN,

Respondents.

On Petition for Review from the
Second Court of Appeals at Fort Worth, Texas

AMICUS CURIAE BRIEF OF THE NO KILL ADVOCACY CENTER IN SUPPORT OF RESPONDENTS KATHRYN AND JEREMY MEDLEN

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INTEREST OF *AMICUS CURIAE*

The No Kill Advocacy Center ("NKAC") is a national, non-profit organization dedicated to ending the unnecessary killing of dogs, cats, and other animals in our nation's animal-sheltering system through the implementation of proven and cost-effective programs and policies that have ended unnecessary shelter killing in more than 80 American communities—including five in Texas (Travis County, Williamson County, Georgetown, Rockwall, and Seagoville). Public and private animal shelters in the United States currently put to death roughly four million animals each year despite readily available alternatives, in part due to a lack of accountability on the part of shelter employees and management. The NKAC files this brief to provide additional analysis on the issues before the Court, and to lend a voice to the thousands of pet owners whose companion animals are improperly put to death each year in U.S. shelters. No fee has been or will be paid for the preparation of this brief.

SUMMARY OF THE ARGUMENT

The Second Court of Appeals correctly determined that "Avery," as property under Texas law, should not be valued any differently than other property simply because he was a dog. Applying the existing legal framework in Texas to the facts before it, the court of appeals properly concluded that Avery's owners—the Medlens (Respondents in this cause)—could seek damages based on Avery's sentimental value to them. In doing so, the court of appeals not only followed the necessary application of existing Texas property law to companion animals, but it also joined with other courts around the country that have recognized the undeniable bond between pets and their owners.

Valuing Avery according to Texas's existing framework will not lead to the parade of horribles claimed by Petitioner Strickland and others. As long as the law considers animals to be mere property (as the court of appeals did), companion animals will never be elevated to a position equal to or above humans. Nor will pet owners be able to file personal-injury-type claims for loss of companionship, mental anguish, or emotional distress—as they ordinarily cannot now for the destruction of property. The existing law in Texas already constrains such claims, limiting the scope of any future litigation regarding companion animals.

The economic concerns raised by Petitioner and her *amici* are likewise unfounded. There is no credible basis for the claim that veterinarians will become

unduly burdened by increased litigation or liability-insurance costs, or that pet ownership will somehow become prohibitively expensive. If anything, the availability of sentimental-value damages should encourage veterinarians, shelter workers, animal-control officers, and other animal-service providers to act with reasonable care and thereby reduce—not increase—the number of injuries to or deaths of companion animals that might give rise to additional litigation. The court of appeals's judgment should be affirmed.

ARGUMENT

The killing of pets that have homes and families ready to reclaim them is endemic to American animal shelters. As courts across the country have recognized, shelters often kill animals regardless of their health or temperament, and in many cases in violation of legally mandated holding periods designed to give pet owners a fair opportunity to reclaim their companions. *See, e.g.*, *Ammon v. Welty*, 113 S.W.3d 185, 186 (Ky. Ct. App. 2002) (before expiration of statutory seven-day hold period, dog warden shot and killed owned dog); *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454, 455 (Alaska 1985) (pound killed plaintiff's dog in violation of hold period after turning plaintiff away ten minutes prior to closing time); *Wilson v. City of Eagan*, 297 N.W.2d 146, 147-48 (Minn. 1980) (pound killed plaintiff's cat in violation of five-day hold period). As part of its work, the NKAC has helped many shelters eliminate the needless killing of

healthy and treatable animals, whether for space, convenience, or by mistake. But common law too has a role, and it is sound public policy to require that shelters act with reasonable care. When they fail to do so, the persons whose pets shelter employees unnecessarily, improperly, and often illegally destroy should be compensated as any Texan would reasonably expect: for the actual value those pets have to their owners. In reaching its conclusion that a pet owner may sometimes be compensated for the sentimental value of his or her animal, the court of appeals correctly applied Texas's existing property-law paradigm to companion animals.

I. THE COURT OF APPEALS CORRECTLY FOLLOWED LONG-HELD TEXAS LAW THAT CONSIDERS COMPANION ANIMALS MERE PROPERTY AND SOMETIMES PERMITS THE RECOVERY OF SENTIMENTAL-VALUE DAMAGES FOR THE LOSS OR DESTRUCTION OF PROPERTY.

The No Kill Advocacy Center does not consider companion animals to be mere property; animals have more inherent value than a pen or lamp. But the NKAC's position in that regard is of no import in this case because in Texas, the law deems animals to be personal property, and the court of appeals's correct judgment fully complies with that conclusion. The court of appeals's opinion logically follows the long-settled Texas paradigm that (1) companion animals are personal property, and (2) sentimental damages are sometimes recoverable for the loss or destruction of property. Thus, although the court of appeals's decision was

newsworthy, as a legal matter, it was neither revolutionary nor even evolutionary. It simply applies Texas law as it currently exists to the facts at hand.

As the group of law professors explained in their *amicus* brief in this cause, Texas law has long acknowledged that the value of an item of property may be measured in three ways, *see* Law Prof. Br. at 17:

- by its price on the open market, *see id*. (citing *Pasadena State Bank v. Isaac,* 228 S.W.2d 127, 128 (Tex. 1950));
- by the value its use provided to its owner, *id.* (citing *Crisp v. Sec. Nat'l Ins. Co.*, 369 S.W.2d 326, 328-29 (Tex. 1963)), or
- by its special, sentimental value to its owner, *id.* (citing *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299, 305 (Tex. 1963)).

Like any other property, there may be times when a companion animal's monetary value is best measured by one of the first two tests. And like any other item of property, there may be times when a companion animal's monetary value is best measured by the third test—its sentimental value to its owner. There is nothing revolutionary in this; it is simply the application of settled principles of Texas property law in the context of companion animals.

Nevertheless, Petitioner Strickland opines that—unlike other property—a companion animal's worth should *never* be measured by its sentimental value to its owner. *See* Strickland Br. at 18-20. But Strickland offers no principled basis for departing from Texas's established analytical framework for determining an item of property's value, and the justifications she offers contravene this Court's long-

held views regarding ordinary property's valuation. Strickland's arguments are without merit.

Strickland opines, for example, that inanimate heirlooms are unique in justifying property valuation by sentiment in a way that companion animals are not. *See* Strickland Reply Br. at 7. But no legitimate distinction between the two is made. To the contrary, like family heirlooms, it is "a matter of common knowledge" that companion animals "generally have no market value which would adequately compensate their owner for their loss or destruction." *See Brown*, 369 S.W.2d at 305. And like heirlooms, companion animals are sometimes "not susceptible of supply and reproduction in kind." *Id.* As such, their value is sometimes best measured by sentiment. *See Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. App. Ct. 2008) (analogizing pets with inanimate family heirlooms for which replacement cost is insufficient as a measure of damages and awarding damages based on "actual value to [the] plaintiff"); *see also Bueckner v. Hamel*, 886 S.W.2d 368, 378 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (Andell, J., concurring) ("The law should reflect society's recognition that animals are sentient and emotive beings …."). Indeed, this Court's writing in *City of Tyler v. Likes* on the importance of dispensing adequate compensation for a property owner's loss could and should apply equally to companion animals as it does to any other item of property:

> In some cases . . . the damaged property consists of 'articles of small market value' that 'have their primary value in sentiment.' Such property can only be adequately valued subjectively; yet, *the owner should still be compensated*. . . . The owner's feelings thus help determine the value of the destroyed item to the owner for purposes of property, not mental anguish, damages.

962 S.W.2d 489, 497 (Tex. 1997) (internal citations omitted) (emphasis added).

Strickland nonetheless argues that companion animals should not be valued by sentiment because they are easily replaced by one of many in the "high supply" of pets available for purchase or adoption. *See* Strickland Reply Br. at 7. Putting aside the fact that anyone who has ever loved a dog or cat (or horse or rabbit or any other companion animal) would find this argument repellant, Strickland's argument illogically conflates a *type* of property with a particular *item* of property. Like a treasured heirloom, a companion animal no doubt may be replaced with the same *type* of property—*i.e.*, another animal of the same species and gender. But also like a treasured heirloom, a beloved companion animal is itself irreplaceable. Replacement companion animals—like replacement wedding veils or antique engagement rings—are no doubt available in the market place, but their "value is in sentiment and not in the market place." *See Brown*, 369 S.W.2d at 305; *see also* City of Tyler, 962 S.W.2d at 497.

Of course, the Medlens can find another dog. But try as they might, they will never find another *Avery*. As such, "the most fundamental rule of damages that every wrongful injury or loss to persons or property should be adequately and

reasonably compensated requires the allowance of damages in compensation for [his] reasonable special value . . . to [his] owner." *See Brown*, 369 S.W.2d at 305. That is the rule rightly applied by the court of appeals.

II. THE COURT OF APPEALS'S OPINION—WHICH CORRECTLY RECOGNIZED AND APPLIED EXISTING TEXAS LAW—IS NOT AT THE FOREFRONT OF ANIMAL-RIGHTS IDEOLOGY; IF ANYTHING, IT LAGS BEHIND.

In its brief, *amicus curiae* American Kennel Club implies that, by applying Texas's existing property-law paradigm to companion animals, the court of appeals somehow advanced Texas law beyond American common-law norms. *See* Brief of the American Kennel Club *et. al*, ("AKC Brief") at 4-8. That is not remotely true.

Many states permit pet owners to recover far greater damages than those allowed by the court of appeals under Texas law. For example, a Louisiana appellate court recently permitted the recovery of mental-anguish damages in a case involving a defendant who struck and killed the plaintiff's dog. *Barrios v. Safeway Ins. Co.*, 97 So.3d 1019, 1022-24 (La. Ct. App. 2012) (affirming award due to "family-like relationship" with dog and "psychic trauma" caused by killing). A California appellate court recently recognized emotional distress as a component of damages in a case involving a defendant who attacked the plaintiff's dog with a baseball bat. *See Plotnik v. Meihaus*, 208 Cal.App.4th 1590, 1606-07 (Cal. Ct. App. 2012) (noting strong attachment between owners and dogs, the loss of which is "keenly felt"). And a Nevada court recently permitted "damages for emotional

harm" in a professional-negligence case against a veterinarian. *Thompson v. Lied Animal Shelter*, No. 2:08-CV-00513, 2009 WL 3303733, at *6 (D. Nev. Oct. 14, 2009). These cases are in no way unique among American jurisdictions: time and again, courts have gone significantly farther than the court of appeals's judgment below.[1]

Likewise, some jurisdictions permit the recovery of damages for the cost of veterinary-care expenses—even if those expenses greatly exceed a pet's fair-market value. *See, e.g*, *Burgess v. Shampooch Pet Indus., Inc.*, 131 P.3d 1248, 1249, 1252-53 (Kan. Ct. App. 2006) (noting award of actual veterinary expenses, even though above dog's market value, "is in accord with the very purpose of the

[1] *See, e.g.*, *Womack v. Von Rardon*, 135 P.3d 542, 546 (Wa. Ct. App. 2006) ("[W]e hold malicious injury to a pet can support a claim for, and be considered a factor in measuring a person's emotional distress damages."); *Burgess v. Taylor*, 44 S.W.3d 806, 812-13 (Ky. Ct. App. 2001) (affirming award of compensatory and punitive damages for intentional infliction of emotional distress for conversion and slaughter of plaintiff's horses); *Gill v. Brown*, 695 P.2d 1276, 1277 (Idaho Ct. App. 1985) (recognizing cause of action for intentional infliction of emotional distress for killing pet); *Richardson*, 705 P.2d at 456 (recognizing cause of action for intentional infliction of emotional distress for killing pet); *Peloquin v. Calcasieu Parish Police Jury*, 367 So.2d 1246, 1251 (La. Ct. App. 1979) (damages for destruction of plaintiff's cat include "awards for mental anguish, humiliation, etc., as well as special and/or actual damages"); *Corso v. Crawford Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (awarding damages for plaintiff's "shock, mental anguish and despondency due to wrongful destruction and loss of [her] dog's body"); *Banasczek v. Kowalski*, 10 Pa. D. & C.3d 94, 97 (Pa. Com. Pl. 1979) ("we think the more enlightened view is to allow recovery for emotional distress in the instance of the malicious destruction of a pet"); *La Porte v. Associated Indeps., Inc.*, 163 So.2d 267, 267-69 (Fla. 1964) ("we feel that the affection of a master for his dog is a very real thing and that the malicious destruction of a pet provides an element of damage for which the owner should recover, irrespective of the [market] value of the animal").

law of damages");[2] *Hyland v. Borras*, 719 A.2d 662, 664 (N.J. Super. Ct. App. Div. 1998) (reasoning that even though pets "have no calculable market value beyond the subjective value of the animal to its owner," "[i]t is purely a matter of 'good sense' that defendants be required to 'make good the injury done' as the result of their negligence"); *Kaiser v. United States*, 761 F.Supp. 150, 156 (D.D.C. 1991) (awarding $1786.50 in veterinary fees for injury to dog shot by U.S. Capitol Police); *Zager v. Dimilia*, 524 N.Y.S.2d 968, 970 (N.Y. Vill. Ct. 1988) ("[T]he Court concludes that the proper measure of damages in a case involving injury suffered by a pet animal is the reasonable and necessary cost of reasonable veterinary treatment."). Given that "animals are living creatures," these courts have reasoned that "the usual standard for damaged property—market value—is inadequate when applied to injured pets." *Martinez v. Robledo*, 210 Cal.App.4th 384, 392 (Cal. Ct. App. 2012). Texas courts are far from the vanguard.

The AKC's sweeping claims to the contrary—regarding the purported "thirty-five" jurisdictions' rejection of "emotion-based damages" for the loss of a pet, *see* AKC Brief at 4-7—are both misdirected and misleading. The issue here is how to measure an animal's actual value to its owner (which, as property,

[2] The AKC Brief cites *Burgess v. Shampooch* as indicative of Kansas rejecting damages based on the emotional relationship between an owner and a pet. *See* AKC Brief at 4-5. But that appellate court did recognize that the value of a pet is typically noneconomic, and therefore reasoned that "the award of the amount Burgess spent on veterinary bills is in accord with the very purpose of the law of damages—to make Burgess whole and return her to the position she was in prior to Shampooch's tortious conduct." 131 P.3d at 1253.

necessarily may include its sentimental or intrinsic value under settled Texas law)—*not* whether Texas should recognize an independent tort for causing a pet owner's emotional distress. Moreover, many of the cases cited by the AKC do not reach the issue presented in this case (some expressly so), and others merely hold that a plaintiff has failed *to prove* his or her claim. *See, e.g.*, *Kaufman v. Langhofer*, 222 P.3d 272, 277 (Ariz. Ct. App. 2009) (reasoning that while "emotional distress"-based claim was correctly dismissed, the issue of whether a pet's "actual value" should be measured by "the sentimental value" it held to its owner was not before the court).[3] And in any event, many courts in these same

[3] *See also McMahon v. Craig*, 176 Cal.App.4th 1502, 1509-1517 (Cal. Ct. App. 2009) (rejecting intentional or negligent infliction of emotional distress claim in veterinary context); *Naples v. Miller*, No. 08C-01-093, 2009 WL 1163504, at *2 (Del. Super. Ct. Apr. 30, 2009) (rejecting claim for veterinary expenses and "pain and suffering" to owner, but expressly noting that actual value to owner might be recoverable for the loss of beloved pet), *aff'd*, 992 A.2d 1237 (Del. 2010); *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186-87 (Va. 2006) (rejecting claim for emotional distress of automobile-accident victim due to concern over dog in vehicle at the time and noting that Virginia—unlike Texas—bars sentimental-value damages for the loss of any property including family heirlooms); *Myers v. City of Hartford*, 853 A.2d 621, 626 (Conn. App. Ct. 2004) (rejecting claim for intentional or negligent infliction of emotional distress); *Kennedy v. Byas*, 867 So.2d 1195, 1197-98 (Fla. Dist. Ct. App. 2004) (holding pet owner may not recover emotional-distress damages for veterinary malpractice, but expressly distinguishing case from those involving "malicious" conduct towards pet); *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1125-26 (Ohio Ct. App. 2003) (rejecting claim for emotional distress due to injury to property, but holding no intentional misconduct was demonstrated and expressly permitting recovery of veterinary expenses (presumably more than the pet's market value)); *Ammon*, 113 S.W.3d at 187-88 (rejecting existence of loss-of-consortium claim, but expressly holding that "[s]imply because a claim involves an animal *does not preclude* a claim for intentional infliction of emotional distress") (emphasis added); *Lockett v. Hill*, 51 P.3d 5, 6-8 (Or. Ct. App. 2002) (denying claim for emotional-distress damages because plaintiff presented no duty other than negligence upon which to attach such damages, and noting that plaintiff had already been awarded $1,000 in compensatory damages for negligence in mauling of pet cat); *Holbrook v. Stansell*, 562 S.E.2d 731, 733 (Ga. Ct. App. 2002) (holding a person "cannot recover for emotional distress from merely witnessing damage *to another person's property*") (emphasis

jurisdictions—as well as additional jurisdictions—have permitted pet owners to recover an amount greater than the market value of their pet in some other way, such as damages for emotional distress,[4] punitive damages,[5] professional-

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added); *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1288-89 (Mass. App. Ct. 2002) (noting that plaintiff only advanced claims for "emotional distress and loss of companionship and society," and expressly *not* reaching whether emotional-distress damages may be recovered by "persons who suffer the loss of a companion animal"); *Rabideau v. City of Racine*, 627 N.W.2d 795, 801-04 (Wis. 2001) (barring negligent infliction of emotional distress claim for loss of property but holding that plaintiff failed to prove elements of intentional infliction of emotional distress and expressly not reaching issue of valuation of pet as property); *Harabes v. Barkery, Inc.*, 791 A.2d 1142, 1144-46 (N.J. Super. Ct. App. Div. 2001) (holding public policy bars negligent infliction of emotional distress or loss of companionship for pet, but noting facts did not present issue of intentional infliction of emotional distress); *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000) (noting Michigan never permits "damages for emotional injuries allegedly suffered as a consequence of property damage"); *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691-92 (Iowa 1996) (rejecting emotional-distress and intrinsic-value damages in pet-injury case, but expressly noting that no willful conduct was alleged and that injured dog's value as a pet was not diminished); *Rowbotham v. Maher*, 658 A.2d 912, 913 (R.I. 1995) (holding statute did not permit "emotional trauma" damages and rejecting claim for negligent infliction of emotional distress); *Soucek v. Banham*, 503 N.W.2d 153, 163-64 (Min. Ct. App. 1993) (no proof of negligent infliction of emotional distress and expressly not reaching intentional infliction of emotional distress); *Wright v. Edison*, 619 S.W.2d 797, 801-02 (Mo. Ct. App. 1981) (not involving any claim for emotional-distress damages or sentimental value of pet; holding that plaintiff failed to demonstrate pet cats' future nervousness as a result of being locked in a room while on vacation).

[4] *See supra* note 1; *see also Ammon*, 113 S.W.3d at 188 ("Simply because a claim involves an animal does not preclude a claim for intentional infliction of emotional distress."); *Mitchell v. Heinrichs*, 27 P.3d 309, 311 (Alaska 2001) (acknowledging "a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal"); *Gill*, 695 P.2d at 1277 (permitting claim for intentional infliction of emotional distress based on defendant's shooting of plaintiff's donkey); *Thompson*, 2009 WL 3303733, at *6 (noting claim for "the value of the dog plus damages for emotional harm" and permitting claim to proceed based on professional negligence).

[5] *See Burgess v. Taylor*, 44 S.W.3d at 812-13 (affirming award of compensatory and punitive damages for intentional infliction of emotional distress for conversion and slaughter of plaintiff's horses); *Propes v. Griffith*, 25 S.W.3d 544, 546-47, 550-51 (Mo. Ct. App. 2000) (awarding punitive damages against neighbor who took plaintiff's two dogs to vet clinic and had them put to death); *La Porte*, 163 So.2d at 267, 269 (affirming an award that included punitive damages).

negligence damages,[6] or for the recovery of veterinary expenses.[7] Therefore, a great number of jurisdictions have gone beyond what is permitted in Texas as recognized by the court of appeals.

Moreover, Texas's approach—correctly applied by the court of appeals—is far from trendsetting. For example, in *Jankoski v. Preiser Animal Hosp., Ltd.*, an Illinois appellate court noted that the "concept of actual value [of a dog] to the owner may include some element of sentimental value in order to avoid limiting the plaintiff to merely nominal damages." 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987).[8] Likewise, in *Brousseau v. Rosenthal*, a New York court determined that the appropriate measure of damages is the dog's actual value to its owner. 443 N.Y.S.2d 285, 285 (N.Y. Civ. Ct. 1980) ("[T]he court must assess the dog's actual value to the owner in order to make the owner whole."); *see also Anzalone v. Kragness*, 826 N.E.2d 472, 478-89 (Ill. App. Ct. 2005) (applying "value to the owner" measure of damages); *Leith*, 899 N.E.2d at 641 (applying "actual value to the owner" test to award veterinary expenses far above the market value of a pet).

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[6] *See Thompson*, 2009 WL 3303733, at *6.

[7] *See supra* note 2.

[8] The AKC cites *Jankoski* as supporting its view that many courts have rejected damages for "emotion-based" damages. See AKC Brief at 4-5. While the AKC correctly notes that the *Jankoski* court rejected a claim for loss of companionship, the court actually went on to hold that "the law in Illinois is that where the object destroyed has no market value, the measure of damages to be applied is the actual value of the object to the owner. The concept of actual value to the owner *may include some element of sentimental value* in order to avoid limiting the plaintiff to merely nominal damages." *Jankoski*, 510 N.E.2d at 1087 (emphasis added).

Even the *Restatement (Second) of Torts* recognizes that market value alone is a legally inappropriate and insufficient measure of damages for the loss of a pet. *See* RESTATEMENT (SECOND) OF TORTS § 911, comment e (1965) (concluding that in the case of a dog, "it would be unjust to limit the damages for destroying or harming [the animal] to the exchange value").

Nor is Strickland correct to suggest that allowing pet owners to seek sentimental-value damages creates a new cause of action akin to loss of consortium. *See* Strickland Brief at 23-27. To the contrary, the court of appeals's holding merely recognizes the current law on property damages—*i.e.*, sometimes the value of an item of property can be measured by its sentimental value to its owner. On this point, Strickland fails to comprehend the distinction between a court awarding an owner damages based on the actual value of his property (in this case a pet), and one acknowledging a new, independent cause of action (such as for the loss of pet companionship). *See Plotnik*, 208 Cal.App.4th at 1605, 1607 (noting no cause of action for loss of pet companionship, but awarding damages for emotional distress resulting from trespass to property); *see also City of Tyler*, 962 S.W.2d at 497 ("[t]he owner's feelings thus help determine the value of the destroyed item to the owner for purposes of property, not mental anguish, damages").

Finally, an animal's sentimental value will not become unbounded if the court of appeals's opinion is upheld, as Strickland complains. *See* Strickland Br. at 25-26. Rather, damages will continue to be limited to the "*reasonable* special value" to the owner. *See Brown*, 369 S.W.2d at 305 (emphasis added); *see also City of Tyler*, 962 S.W.2d at 497. An award of these damages is never a given: the burden of proving an animal's sentimental value rests with the owner who must provide legally and factually sufficient evidence, and judicial oversight remains a check on damages just as it always has for similarly irreplaceable property.

III. THE COURT OF APPEALS'S JUDGMENT WILL HAVE LITTLE-TO-NO ADVERSE ECONOMIC IMPACT ON TEXAS VETERINARIANS AND PET OWNERS.

Amicus curiae the Texas Veterinary Medical Association speculates that the court of appeals's opinion will result in seismic increases in malpractice insurance, which, it suggests, will make veterinary care prohibitively expensive and lead to animal suffering and abandonment, among other horribles. *See* TVMA Letter Br. at 1; *see also* AKC Br. at 11-13. There is no authority substantiating these sweeping allegations.

Indeed, for decades, courts around the country have awarded damages for sentimental value, emotional distress, mental anguish, and loss of companionship. *See supra* Part II. Despite these awards, the veterinary association has identified no jurisdiction in which their practice—or pet ownership—has been eliminated or

even threatened. Contrary to their predictions of doom and gloom, veterinarians across jurisdictions—including those with significantly more liberal tort regimes than Texas—are not facing particularly burdensome insurance premiums: for less than $500 a year, a small-animal veterinary practitioner can purchase $5,000,000 of coverage. *See* AVMA PLIT, Annual Premiums Effective January 1, 2012 (2012). Given that almost fifteen years ago "nearly three-quarters of all small animal practices in the United States gross[ed] $300,000 to $500,000 per year," and "almost one-quarter gross[ed] more than $750,000 per year," a $500 insurance premium is relatively insignificant. *See* Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 46 (1998) (noting survey published by American Animal Hospital Association concerning veterinary revenues).

Furthermore, the gravamen of the TVMA's argument—that costs of care will rise beyond people's ability or willingness to pay if lawsuits and awards increase—has been debunked by an analysis performed by ABD Insurance, the second largest veterinary liability insurer: ABD determined that if emotional damages for companion-animal loss were allowed (albeit capped at $25,000), premiums would rise by only $212 per year, which amounts to—on average—a mere thirteen cents per customer. *See* Christopher Green, *The Future of Veterinary*

Malpractice Liability in the Care of Companion Animals, 10 ANIMAL L. 163, 218 (2004). Even if rates "'skyrocketed' by 100 times their current level," the average increased cost per pet-owning household would be $11.50. *Id*. at 219. The sky is in no danger of falling.

Members of veterinary associations owe their livelihoods to the animal-loving public's love of their pets. *See* Sonia S. Waisman & Barbara R. Newell, *Recovery of "Non-Economic" Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 ANIMAL L. 45, 70 (2001). It is, therefore, the very sentimental attachment that owners have for their pets that compels owners to spend thousands of dollars for surgeries, cancer treatment, and rehabilitative care instead of euthanizing an injured or sick pet. *Id*. ("companion animal . . . veterinarians are in business precisely because human companions do not treat their animal companions like property"). It is not too much to ask that veterinarians and other animal-service providers provide reasonable care to pets, and when they fail to provide such care, compensate pet owners for the actual value of their loss. The court of appeals's holding, in line with long-settled Texas law, provides an appropriate and limited incentive for achieving quality care.

IV. AS LONG AS TEXAS DEFINES COMPANION ANIMALS AS PROPERTY, ITS COURTS SHOULD AT LEAST AFFORD COMPANION-ANIMAL OWNERS REASONABLE COMPENSATION FOR THEIR ANIMALS' LOSS OR DESTRUCTION.

There is no dispute that under current Texas law, as recognized and applied by the court of appeals, companion animals are mere property. And for purposes of reviewing the court of appeals's judgment, the NKAC does not and need not urge the Court to hold differently. But at some point, perhaps in another case when the issue is before the Court, this Court may well acknowledge that deeming pets as having equivalent value to any other property—the same as a lamp or desk—fails to recognize the reality of the role companion animals play in modern lives. As one jurist wrote, "to say [a dog] is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept." *Corso,* 415 N.Y.S.2d at 183.

But the issue here is different; it is instead whether this Court should overrule the court of appeals and adopt a rule that would deem companion animals to be worth *less* than inanimate family heirlooms like watches and earrings. That rule would be considered nonsensical by any reasonably objective Texan, and so too should it be by this Court. The court of appeals's judgment should be affirmed.

PRAYER

For these reasons as well as those advanced in Kathryn and Jeremy Medlen's Response to Petition for Review and Brief on the Merits, the NKAC respectfully requests that the Court affirm the judgment of the court of appeals.

Respectfully submitted,

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