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Re: 02-12-00285-CV Mary Cummins v. Amanda Lollar and Bat World Sanctuary

To the Hon. Court of Appeals for the Second District of Texas

This *Amici Curiae* letter is submitted in behalf of The Cambodia Wildlife Sanctuary, a registered 501(c)(3) charitable institution and Elephants in Crisis.org. These are both organizations which are concerned with animal protection and conservation. The instant letter brief is submitted to address an apparent injustice which threatens to undermine basic First Amendment protections relevant to everyone, but in particular those individuals brave enough to speak up for the protection of animals. Animals have no voice of their own and thus, without people to stand up for their safety, no other protection within our legal system.

The judgment in question rests upon a transparently inadequate factual foundation. Starting with the most fundamental of issues, what evidence exists to support an actual damage award of \$3 million? The organization in question, Bat World Sanctuary, has likely never earned \$3 million, much less suffered \$3 million in damages. Proof of actual damages is required and should never be presumed, particularly when punitive damages are at issue.

As this Court is well aware, in order to comply with United States Supreme Court precedent, the punitive award must bear a very specific relationship to the actual damages proven. Of course, in this case, no real damage has been proven. So, how many multiples of the actual damages suffered is a \$3 million punitive award?

No evidence, much less any supportable answer, exists to satisfy this constitutional imperative.

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Similarly, the Appellee attempts to argue a breach of contract, relying upon an Internship agreement. But, it merely limits disclosure of allegedly proprietary techniques for the care of bats. But, nothing about the disclosures at issue related to any proprietary techniques for the care of bats. All of the disclosures were made to address serious abuses associated with mistreatment of bats in the "care" of Appellees.

Similar issues arise every day. Most are publicly reported and heralded because they result in positive change. Some of the best recent examples relate to reporting about abuses in the beef industry, involving serious mistreatment of downed cows and horrific abuses of sick and injured animals. The instant case is simply another example of public reporting about mistreatment of animals, which is and should be a matter of public concern.

In fact, mistreatment of animals is itself a crime and it is a crime to fail to report the commission of a crime. Thus, the only possible basis for a claim of defamation would be proof of the falsity of the claims. However, in this case, there are actual documents and photographs to prove the offenses. Thus, rather than awarding the Appellee a judgment, reference of the matter to the appropriate officials for criminal prosecution would have been a more appropriate resolution.

But, for whatever reason, the trial court entered the judgment now at issue. On its face, and upon review of the record, it is manifestly unsupportable. To preserve the integrity of the judicial system, this transparently improper result should be reversed.

Very truly yours,

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