

No. 94389-3

SUPREME COURT  
OF THE STATE OF WASHINGTON

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**ROBERT REPIN,**

Petitioner

v.

**STATE OF WASHINGTON, et al.,**

Respondent

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ON PETITION FOR REVIEW FROM  
COURT OF APPEALS, DIVISION III

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AMICUS CURIAE BRIEF OF ANIMAL LEGAL DEFENSE FUND  
IN SUPPORT OF ROBERT REPIN'S PETITION FOR REVIEW

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## I. INTRODUCTION

As interpreted by the lower courts of this State, Washington law bars plaintiffs from recovering noneconomic damages arising from the breach of a contract for the euthanasia of a companion animal. In affirming the ruling of the trial court in this case, the Washington Court of Appeals, Division III, stated that it was “bound by” Washington law, under which “recovery of emotional disturbance damages for breach of contract is generally not recoverable.” *Repin v. State*, 198 Wn. App. 243, 259, 392 P.3d 1174 (2017). Chief Judge Fearing, however, wrote a separate concurrence “to advocate a change in the law.” *Id.* at 279 (Fearing, C.J., concurring). As the Chief Judge observed, “[p]rinciples underlying the law of damages for breach of contract and values basic to the law of negligent infliction of emotional distress call for an award of emotional distress damages to the owner of a companion animal when a veterinarian commits malpractice and breaches the implied covenant of competent care in the treatment of the pet.” *Id.*

The Animal Legal Defense Fund (“ALDF”) respectfully submits this amicus curiae brief in support of Mr. Repin’s petition for review of the Court of Appeals’ decision, and urges this Court to grant review to determine this matter of substantial public interest: whether the courts of this State should permit the recovery of damages for emotional distress arising from the material breach of a contract for the euthanasia of a

companion animal. The adoption of this rule would bring Washington law in line with the lived experience of its citizens, giving due judicial recognition to the significance of the bonds that people form with their companion animals and fulfilling the fundamental purposes of tort law.

## II. IDENTITY AND INTEREST OF AMICUS

ALDF is a national nonprofit organization with more than thirty-five years of experience litigating cases and analyzing legal issues concerning animals. ALDF's efforts to advance the legal interests of animals are supported by hundreds of dedicated attorneys, law professors, law students, and more than 110,000 members, many of whom live in Washington. Each year, ALDF receives many requests for assistance from members of the public whose companion animals have been harmed by negligence, gross negligence or malice, and consequently files amicus curiae briefs in many related civil claims. Courts have found ALDF's amicus briefs persuasive, and have cited and quoted them in opinions. *See, e.g., Martinez v. Robledo*, 210 Cal. App. 4th 384 (Cal. Ct. App. 2012).

## III. STATEMENT OF ISSUES OF CONCERN TO AMICUS

Whether, under RAP 13.4(b)(4), the Supreme Court should grant review to determine an issue of substantial public interest: the availability of compensatory damages for emotional distress arising from the material breach of a contract for the euthanasia of a companion animal.

#### IV. ARGUMENT

A contract for euthanasia is unique. In a sense, euthanasia is the opposite of a wrongful death: it is a deliberate ending of a life in a painless and peaceful manner. The decision to euthanize an animal is heartbreaking and difficult, and often a person's last act of love and compassion for a beloved companion animal. The entire purpose of a contract for euthanasia is to spare the companion animal from needless suffering and the trauma of a prolonged and painful death. Naturally, when such a contract is materially breached—when the animal's life is ended in a way that *is* prolonged and painful—the human companion who arranged for the euthanasia, and witnessed the traumatic death, will suffer devastating emotional harm.

Yet Washington law, as understood and applied by the trial and appellate courts below, does not account for this reality. This Court should take the opportunity to determine the issue of substantial public interest squarely presented by this case: whether emotional distress damages for the breach of this unique type of contract should be recoverable. The availability of such damages would appropriately recognize the profound nature of the human bond with companion animals by allowing for recovery commensurate with the actual harm caused by the breach of such a contract. Allowing plaintiffs to seek such damages would thereby fulfill the fundamental purposes of tort law—fair compensation, meaningful

deterrence, and the reflection of societal values. Furthermore, the ability to recover such damages would be appropriately limited to cases in which they are foreseeable, as emotional distress is the near-inevitable result of a breach of this unique type of contract.

A. The Depth of the Human Bond with Companion Animals Is Widely Understood and Acknowledged

This Court should grant review to consider narrowing the wide gap between the law as it is currently applied and the true nature of human relationships with companion animals. As these relationships have been more closely scrutinized and studied in recent years, it has become widely understood and acknowledged that we develop deep and meaningful bonds with our companion animals.<sup>1</sup> See, e.g., Wendy Packman, et al., *Therapeutic Implications of Continuing Bonds Expressions Following the Death of a Pet*, 64 OMEGA: JOURNAL OF DEATH AND DYING 335, 336 (2011–2012); Sandra B. Barker, *Therapeutic Aspects of the Human-Companion Animal Interaction*, PSYCHIATRIC TIMES, Feb. 1, 1999, at 1-3, available at <http://www.psychiatrictimes.com/articles/therapeutic-aspects-human-companion-animal-interaction> (collecting studies documenting the beneficial effects of pets on the emotional and physical health of the elderly

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<sup>1</sup> This is not to say that recognition of the bonds between humans and companion animals is exclusively modern. See *Repin*, 198 Wn. App. at 279 (Fearing, C.J., concurring) (quoting closing argument of U.S. Senator George Vest in *Burden v. Hornsby* (1870)).



and handicapped) (last accessed 5/25/2017); Charles Siebert, *Why Close Encounters With Animals Soothe Us*, N.Y. TIMES MAGAZINE, May 18, 2017, available at <https://www.nytimes.com/2017/05/18/magazine/why-close-encounters-with-animals-soothe-us.html>.

Notably, studies of the health benefits of animal companionship have shown the importance of *specific* human–animal bonds. Mara Baun, et al., *Physiologic Effects of Human/Companion Animal Bonding*, 33 NURSING RES. 126, 128 (1984). Thus, as with human relationships, we bond with individual animals, who consequently are uniquely valuable to us. Indeed, in a 2015 Harris poll, *95 percent* of respondents considered their companion animals to be members of the family—up from 91 percent in 2012. Larry Shannon-Missal, *More Than Ever, Pets are Members of the Family*, THE HARRIS POLL (Jul. 16, 2015), available at <http://www.theharrispoll.com/health-and-life/Pets-are-Members-of-the-Family.html>) (last accessed 5/25/2017).

As Chief Judge Fearing pointed out in his concurring opinion, “[m]any decisions, including Washington decisions, recognize the bond between animal and human and the intrinsic and inestimable value of a companion animal.” *Repin*, 198 Wn. App. at 284 (Fearing, C.J., concurring) (citing, *inter alia*, *Mansour v. King Cnty.*, 131 Wn. App. 255, 265, 128 P.3d 1241 (2006); *Womack v. Von Rardon*, 133 Wn. App. 254, 263–64, 135 P.3d

542 (2006); *Pickford v. Masion*, 124 Wn. App. 257, 263, 98 P.3d 1232 (2004); *Rhoades v. City of Battle Ground*, 115 Wn. App. 752, 766, 63 P.3d 142 (2002)). Recently, a Washington jury awarded \$36,000 in damages for the wrongful death of a dog, \$15,000 of which was for emotional distress suffered by the dog's owner. *Anderson v. Hayles*, No. 14-2-51133-0 (Franklin Cty. Sup. Ct.), docket no. 71 (Verdict, August 3, 2016).

Further, like nearly every other state and territory of the United States, Washington has numerous animal-protection laws that apply in various contexts and provide for civil and criminal liability for harming animals. See Animal Legal Defense Fund, *Animal Protection Laws of Washington*, available at <http://aldf.org/wp-content/uploads/compendium-map/2017/usa/WASHINGTON.pdf> (last accessed 5/25/2017). Such laws illustrate the fact that, although animals are legally classified as personal property, they are not to be treated like inanimate objects. This is consistent with judicial observations that “the law already treats animals differently from other forms of personal property[.]” *Martinez v. Robledo*, 210 Cal. App. 4th 384, 391 (2012).

B. The Entire Purpose of a Contract for Euthanasia Is a “Good Death”

Euthanasia (literally “good death” in Ancient Greek) refers to the practice of ending a life in a painless manner. Willem H.J. Martens, *They Shoot Horses, Don't They? How Valid Are the Arguments of Opponents*

*Against Euthanasia?*, Med. & L. 739, 739 (2009). Euthanasia of a suffering animal is “generally regarded and accepted as an act of humanity and mercy.” *Id.* at 741.

According to the American Veterinary Medical Association, a “good death” is “tantamount to the humane termination of an animal’s life.” AVMA GUIDELINES FOR THE EUTHANASIA OF ANIMALS: 2013 ED., available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>. A veterinarian’s “prima facie duty” in euthanizing an animal includes (1) inducing death “in a manner that is in accord with an animal’s interest and/or because it is a matter of welfare” and (2) using “humane techniques to induce the most rapid and painless and distress-free death possible.” *Id.* at 6. A “good death” by euthanasia “relieves the animal’s suffering, which is the desired outcome.” *Id.*

The law should evolve to reflect the value of this practice by recognizing that the entire purpose of a contract to perform a euthanasia is to provide a companion animal with a desirable “good death”—which benefits not only the animal, but also the human companion who has the weighty responsibility of making decisions on behalf of the animal, and a deep interest in alleviating the animal’s suffering.

C. Washington Courts Should Permit Recovery of Emotional Distress Damages for Breach of a Contract for Euthanasia

The Restatement (Second) of Contracts § 353 recognizes that emotional damages caused by a contractual breach are available where “the breach is of such a kind that serious emotional disturbance was a particularly likely result.” While Washington courts have not expressly adopted this particular section of the Restatement, they have adopted or acknowledged other sections of it. *See Repin*, 198 Wn. App. at 280 (Fearing, C.J., concurring) (collecting cases). The comments to Section 353 offer examples of contracts that are “particularly likely to cause serious emotional disturbance,” including contracts for the proper disposition of dead bodies and contracts for the delivery of messages concerning death. Restatement (Second) of Contracts § 353 cmt. a.

ALDF asks the Court to accept review of this case to consider whether emotional distress damages should be recoverable under Washington law for the breach of a contract for euthanasia, in which the very purpose of the contract is to provide a “good death.” Where such a contract is materially breached, what is in fact provided is a painful and/or traumatic death. By its nature, then, “[b]reach of contract by the veterinarian will *likely* cause serious emotional disturbance . . . The veterinarian knows of the bond between a human being and his companion

animal and the trauma resulting from the breach of a contract to competently care for the pet.” *Repin*, 198 Wn. App. at 281–82 (Fearing, C.J., concurring) (emphasis added). ALDF therefore submits that the principle articulated by Section 353 should apply in Washington to contracts for the euthanasia of a companion animal.

Indeed, allowing for the possibility of recovering emotional distress damages where a contract for euthanasia is materially breached is necessary to facilitate the fundamental purposes of United States tort law—to fairly compensate injured plaintiffs, to reflect societal values, and to meaningfully deter tortious conduct. *See Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 154, 43 P.3d 1223 (2002). To foreclose the availability of such damages entirely is to disregard the actual harm caused by the breach of a euthanasia contract and to withhold any meaningful check on negligent or intentional conduct that causes the breach. For instance, such a rule disregards the reality both that “pet owners hold a personal interest, not simply an economic interest, in companion animals” and that the fundamental purpose of a euthanasia contract is to guarantee a “good death”; thus, a breach of this guarantee is “incapable of compensation by reference to the terms of the contract.” *Repin*, 198 Wn. App. at 283 (Fearing, C.J., concurring). And, absent a rule that permits the recovery of meaningful, actual damages in companion animal cases, there is *no deterrent* against even the reckless or

intentional material breach of a contract for euthanasia of a companion animal, as economic damages alone are minimal—both the cost of the procedure and the economic value of the dying animal are minimal.

D. The Availability of Damages Is Properly a Question for the Courts

The availability of emotional distress damages is a matter of common law in Washington. *See, e.g., Bylsma v. Burger King Corp.*, 176 Wn.2d 555, 560, 293 P.3d 1168 (2013) (stating common-law test for the availability of emotional distress damages); *Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 49, 176 P.3d 497 (2008) (noting that negligent infliction of emotional distress is a “judicially created tort”). It is therefore appropriate for the courts, not the legislature, to consider the question presented by Mr. Repin’s petition and take it upon themselves to “align the rule with the underlying principles.” *Repin*, 198 Wn. App. at 285 (Fearing, C.J., concurring).

V. CONCLUSION

For the reasons above, ALDF respectfully urges the Court to accept review of Mr. Repin’s petition to determine this issue of substantial public interest: whether the courts of this State should permit plaintiffs to recover compensatory damages for emotional distress arising from the material breach of a contract for the euthanasia of a companion animal.

RESPECTFULLY SUBMITTED this 19th day of June, 2017.

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Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 19th day of June, 2017, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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/s/ Patti Lane  
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