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March 3, 2014

Admitted in:
Connecticut
Massachusetts
New York

Re: ***Vendrella v. Astriab, S.C. 18949***
H.B. 5044

Senator Edward Meyer, Chair, Environment Committee
Distinguished members of the Environment Committee
Legislative Office Building
Room 3200
Hartford, CT 06106-1591

Dear Chairman Meyer:

My name is Hugh Hughes, and I represent the plaintiffs in *Vendrella v. Astriab*, S.C. 18949. I wrote the briefs in the case, and I argued the appeal before the Supreme Court in September, 2013.

The amicus in *Vendrella* has badly distorted the Appellate Court opinion. The issue before the Appellate and now Supreme Courts is procedural, not substantive. Nothing in the Appellate Court opinion determines what horses are or aren't. Rather, the issue is the type of evidence necessary to prove that the defendant should have expected the harm to occur. Further proof that the issue was procedural is this: it will apply to all common law animal cases. *Vendrella* isn't specifically about horses but about the evidence necessary to prove constructive notice in all common law domestic animal cases.

The amicus has seized upon some archaic language from a 1914 case involving cats and turned it into a PR campaign. The Appellate opinion

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does not hold that horses are vicious. The opinion is concerned with procedural and evidentiary standards and does not make any findings as to the nature of any animal. In addition, the term "vicious" is nothing more than an archaic term of art that means likely to cause injury under the circumstances. The factual determination is always case by case.

The Appellate Court opinion makes this clear. 133 Conn. App. at 653. A "vicious propensity" is simply one "likely to cause injury to human beings under the circumstances in which the party controlling the animal places him . . . ." It remains the plaintiff's burden to prove that a horse bite was more likely to occur than not *under the circumstances* of the case.

The amicus's distortions of the Appellate Court opinion have led to efforts to fix a problem that is a figment of the amicus's imagination. This has unfortunately found its way into the bill before this committee. Subsection (a) of the bill reflects a misunderstanding of the technical term "vicious" and so might actually immunize all horse owners for any harm they might cause. Subsection (a) states, in effect, that horses are presumed incapable of causing injury unless the plaintiff can prove that the horse in question was wild and not raised by people.

Subsection (b) is even more direct and immunizes horse owners against all liability for personal injuries. Ironically, subsection (b) does not cover property damage. So if an improperly fenced horse escapes and tramples someone's flower patch five days in a row, the neighbor can sue the owner of the horse. The neighbor would have to prove that the owner should have known the trampling would occur because it had happened five days in a row whenever the horse got loose.

Compare the same situation, but insert personal injury as the harm. An improperly fenced horse escapes and kicks someone's shin, breaking it on day one. On day two, the horse kicks someone in the femur, breaking it. And so on. By day five, the horse owner probably has constructive notice that his horse is improperly fenced and kicks people. If on day five the horse smashes the neighbor's child's face and kills him, this bill says that the neighbor has no remedy. According to this bill, as written, the neighbor's garden has more protection than his child.

The Supreme Court has heard arguments on *Vendrella*. The Court is well aware of the public controversy surrounding the use of the term "vicious"

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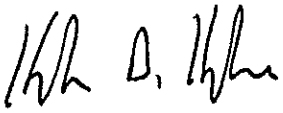
and the fear of horse owners that they have been singled out. I argued the case and responded to questions directed to those concerns.

The Supreme Court will issue a procedural opinion because the only issue before it is procedural—namely, what type of evidence of constructive notice is permitted in animal cases. If the plaintiffs win, they will still be required to prove facts in the trial court that the defendant should have foreseen the horse bite in this case. The plaintiffs might lose this issue on the facts.

Respectfully, I would urge this committee to let the Supreme Court do its job. Their decision will be clear, as they are aware of the confusion about the Appellate opinion. Once the situation becomes clear, and everyone knows exactly what the law says, it will be an appropriate time to react to the decision.

I appreciate your indulgence for a long letter and anticipate that the Supreme Court opinion will moot out virtually all of the concerns of this committee.

Very Truly Yours,



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