

2010 MAR 11 AM 11:31
CLERK OF COURT
TANGIPAHOA PARISH, LA

TWENTY-FIRST JUDICIAL DISTRICT COURT
PARISH OF TANGIPAHOA
STATE OF LOUISIANA

NO. 2010-0000866

DIVISION "F"

GLOBAL WILDLIFE FOUNDATION
VERSUS
NICHOLAS BRILLEAUX

FILED BY: _____
DEPUTY CLERK

**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
IN SUPPORT OF DEFENDANT**

NOW INTO COURT, through undersigned counsel, comes the American Civil Liberties Union Foundation of Louisiana ("the ACLU of Louisiana"), who respectfully requests leave to file the accompanying *Amicus Curiae* Brief in support of Defendant Nicholas Brilleaux.

The ACLU of Louisiana is the state affiliate of the ACLU. The ACLU Foundation of Louisiana is the nonprofit public education and litigation arm of the affiliate. Since its founding in 1920, the ACLU has been a foremost champion of constitutional rights. The ACLU has over 400,000 members and, at any given moment, is involved in hundreds of cases around the nation. The ACLU has appeared before the United States Supreme Court more than any other organization other than the federal government. An essential feature of the ACLU is its commitment to defend the Bill of Rights. As a non-profit, non-partisan organization, it has defended the civil liberties of all segments of the population without regard to their affiliation.

The ACLU of Louisiana has participated in many of the leading Constitutional cases litigated in Louisiana. It often represents or advocates in cases in which freedoms granted by the Bills of Rights are implicated. The ACLU of Louisiana has a strong interest in ensuring that constitutional freedoms are not violated.

The ACLU of Louisiana is familiar with the pleadings filed by the parties in this case and does not seek to duplicate any of the arguments already made. The ACLU of Louisiana seeks

leave to submit an *amicus curiae* brief limited to the question of constitutional protections afforded to works of satire involving public figures and/or matters of public interest.

For the foregoing reasons, the ACLU of Louisiana prays for an Order permitting the filing of the accompanying *amicus curiae* brief and to appear at the argument of this cause as this Court may desire.

Respectfully submitted this 11th day of March 2010,

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF LOUISIANA

By: Katie Schwartzmann
Michael D. Bass Bar Roll No. 27954
306 East North Street
P. O. Drawer 1329
Opelousas, Louisiana 70571-1329
Telephone: (337) 948-8201
Facsimile: (337) 942-4521

and

Katie Schwartzmann, La. Bar No. 30295
P.O. Box 56157
New Orleans, LA 70156
Tel: 504-592-8056
Fax: 504-522-0618

*Attorneys for Amicus Curiae
American Civil Liberties Union
Foundation of Louisiana*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Amicus Curiae* Brief in Support of Defendant was served to all counsel of record, via facsimile and U.S. Mail, this 11th day of March 2010.

Katie Schwartzmann
Katie Schwartzmann

TWENTY-FIRST JUDICIAL DISTRICT COURT

PARISH OF TANGIPAHOA

STATE OF LOUISIANA

NO. 2001-0000866

DIVISION "F"

GLOBAL WILDLIFE FOUNDATION

VERSUS

NICHOLAS BRILLEAUX

FILED BY: _____

DEPUTY CLERK

**[PROPOSED] ORDER PERMITTING FILING OF *AMICUS CURIAE* BRIEF
IN SUPPORT OF DEFENDANT**

Considering the foregoing Motion for Leave;

IT IS HEREBY ORDERED that the ACLU of Louisiana be permitted to file its
Amicus Curiae Brief in support of the defendant in the above-captioned matter.

Amite, Louisiana this ____ day of _____ 2010.

DISTRICT COURT JUDGE

2010 MAR 11 AM 11:31
TANGIPAHOA PARISH CLERK
TANGIPAHOA PARISH, LOUISIANA

TWENTY-FIRST JUDICIAL DISTRICT COURT
PARISH OF TANGIPAHOA
STATE OF LOUISIANA

NO. 2010-0000866

DIVISION "F"

GLOBAL WILDLIFE FOUNDATION
VERSUS
NICHOLAS BRILLEAUX

FILED BY: _____
DEPUTY CLERK

AMICUS CURIAE BRIEF

NOW INTO COURT, through undersigned counsel, comes the American Civil Liberties Union Foundation of Louisiana ("the ACLU of Louisiana"), who offers the Court this *Amicus Curiae* Brief in support of Defendant Nicholas Brilleaux.

BACKGROUND

Defendant Nicholas Brilleaux ("Mr. Brilleaux") maintains a news satire website known as HammondActionNews.com ("HAN").¹ HAN is in the same vein as many other popular news satire websites such as TheOnion.com, HumorFeed.com, NewsBiscuit.com, WeeklyWorldNews.com and BrokenNewz.com, all of which provide satire in the style or format of journalism. HAN provides satirical commentary on matters of public interest through the lens of people and places located in the Hammond, Louisiana area.

A major news story of public interest occurred on February 24, 2010 when Dawn Brancheau, a trainer at Sea World in Orlando, Florida, was killed by an orca whale in front of a stunned and horrified audience. Subsequent news stories revealed that Ms. Brancheau was the third person to be killed by that particular whale. This tragic event sparked a public discussion on the value and efficacy of animal parks, zoos and aquariums in which humans interact with

¹"**News satire**, also called **fake news** or **mock news**, is a type of parody presented in a format typical of mainstream journalism, and called a satire because of its content. News satire has been around almost as long as journalism itself, but it is particularly popular on the web, where it is relatively easy to mimic a credible news source and stories may achieve wide distribution from nearly any site. Generally, the goal of news satire is to make social commentary in a form that provides entertainment. Because news satire relies heavily on irony and deadpan humor, it is occasionally mistaken for real news." (http://en.wikipedia.org/wiki/News_satire; last visited March 10, 2010, emphasis in original.)

animals. This discussion played out in various media across the country.² Mr. Brilleaux joined in this discussion by posting an article on the HAN website and a corresponding FaceBook website entitled “Giraffe Claims Third Victim at Global Wildlife,” a copy of which is attached hereto as Exhibit “A”.

Plaintiff Global Wildlife Foundation owns and operates such an animal park in Tangipahoa Parish, Louisiana known as Global Wildlife Center (collectively “Global Wildlife”). Global Wildlife houses large exotic animals such as giraffes and zebras. Visitors to the park enter the enclosures housing these animals in covered wagons and are then encouraged to feed and interact with the animals.

Mr. Brilleaux’s article presents a satirical account of an animal attack at Global Wildlife. In his article, a fictional giraffe attacked and killed a fictional wildlife guide. As with the orca at Sea World, Defendant’s article indicated that this was the third person that the fictional giraffe had killed. The article further parodied news reports from Sea World by including satirical and fictional statements from purported witnesses to the event at Global Wildlife.

In response to the article, representatives of Global Wildlife sent emails to Mr. Brilleaux demanding that he remove the article from the internet. In response to these emails, Mr. Brilleaux posted disclaimers on the story, indicating that the piece is satirical in nature, and should not be taken as fact. Despite these disclaimers, Plaintiff filed a Petition for Injunctive Relief asking this Honorable Court to enjoin Mr. Brilleaux from posting the article on HammondActionNews.com or FaceBook.com. In its petition, Global Wildlife argues that an injunction should issue against Brilleaux because the article may expose it to ridicule, deprive it of the benefit of public confidence and cause it financial loss.

On March 2, 2010, Judge Ricks issues a temporary restraining order against Mr. Brilleaux, enjoining him from publishing the news story. A hearing on Global Wildlife’s request

² See e.g. “None for the Show; Killer Whale Performances are Breathtaking, Remarkable -- and Sadly out of Step With the Times.” *Los Angeles Times* March 7, 2010, Web. <http://articles.latimes.com/2010/mar/07/opinion/la-ed-whale7-2010mar07>; Nightingale, John, “The Case for Captive Animals.” *CNN* March 2, 2010 Web. <http://www.cnn.com/2010/OPINION/03/02/Nightingale.vancouver.whale/index.html?iref=allsearch>; and Landau, Elizabeth “Biologists: Killer Whales ‘Neurotic’ in Captivity.” *CNN* February 25, 2010 Web. <http://www.cnn.com/2010/US/02/25/whales.seaworld.death/index.html>.

for a preliminary injunction is set for March 15, 2010. This *Amicus Curiae* Brief is now offered in support of Defendant Nicholas Brilleaux.

LAW AND ARGUMENT

The First Amendment to the United States Constitution, which is included in the Bill of Rights, provides, in pertinent part, that “Congress shall make no law . . . abridging the freedom of speech or of the press” Freedoms guaranteed by “The Bill of Rights...become applicable to the states when the United States Supreme Court, through a process of ‘selective’ incorporation determines that each is required by the Fourteenth Amendment’s guarantee of due process.”³ As for First Amendment freedoms of speech and of the press, the United States Supreme Court has specifically held on numerous occasions that they have been incorporated through the Fourteenth Amendment and do apply to the states.⁴ Moreover, the State of Louisiana has also constitutionally guaranteed the freedoms of speech and of the press in Article 1, Section 7 of the Louisiana Constitution.

Having established that both the state and federal constitutions protect the freedoms of speech and of the press, the question before this Honorable Court in deciding whether to issue a preliminary injunction enjoining Mr. Brilleaux from publishing the article in question is whether those constitutional protections are afforded to his genre, satire.⁵ It is respectfully submitted that this answer must be in the affirmative, as “the Supreme Court has observed that the First Amendment protects satirists.”⁶

³ *Rudolph v. Massachusetts Bay Ins. Co.*, 472 So.2d 901 (La., 1985).

⁴ See e.g. *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) and *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

⁵ “Satire” has been defined as follows: “*n.* 1 *a*) a literary work in which vices, follies, stupidities, abuses, etc. are held up to ridicule and contempt *b*) such literary works collectively, or the art of writing them 2 the use of ridicule, sarcasm, irony, etc. to expose, attack or deride vices, follies, etc.” Neufeldt, Victoria, Webster’s New World College Dictionary, 3rd Ed. New York: Simon & Schuster, Inc., 1997. “[S]atire may make fun of people or events in the news or may ridicule other types of literature, art or mass media...” Test, George A. Satire: Spirit and Art. p. 2. Gainesville, FL: University of Florida Press, 1991.

⁶ *Seemuller v. Fairfax County School Bd.*, 878 F.2d 1578, 1583 (4th Cir. 1989), citing *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 S.Ct. 876, 882, 99 L.Ed.2d 41 (1988) and *Falwell v. Flynt*, 805 F.2d 484, 487 (4th Cir.1986) (Wilkinson, J., dissenting from the denial of rehearing en banc). See also *Cliffs Notes, Inc. v. Bantam Doubleday Dell Pub. Group, Inc.*, 886 F.2d 490, 493 (2nd Cir. 1989) stating that satire and parody are “a form of artistic expression, protected by the First Amendment...parody and satire are deserving of substantial freedom-both as entertainment and as a form of social and literary criticism.” (Citations omitted.)

The seminal case applying freedoms of speech and of the press to satire is *Hustler Magazine v. Falwell*.⁷ In that case, the Supreme Court was called upon to determine whether the Rev. Jerry Falwell could recover damages that he suffered as a result of Hustler Magazine publishing a satirical interview in which Rev. Falwell purportedly described an incestuous encounter with his mother. There was no doubt in that case that the facts in the satirical interview were false and that the article's publication had caused harm to Rev. Falwell. Despite this, the Supreme Court ruled in favor Hustler Magazine because Hustler had not published the satirical interview with "actual malice".⁸ The Reporter of Decisions summarized the Court's holding as follows:

Held: In order to protect the free flow of ideas and opinions on matters of public interest and concern, the First and Fourteenth Amendments prohibit public figures and public officials from recovering damages for the tort of intentional infliction of emotional distress by reason of the publication of a caricature such as the ad parody at issue without showing in addition that the publication contains a false statement of fact which was made with "actual malice,"...⁹

In reaching this holding, the Supreme Court provided an exhaustive discussion of the essential role that satire and parody have historically played in American society and of the constitutional protections afforded to this genre. It noted that:

This case presents us with a novel question involving First Amendment limitations upon a State's authority to protect its citizens from the intentional infliction of emotional distress. We must decide whether a public figure may recover damages for emotional harm caused by the publication of an ad parody offensive to him, and doubtless gross and repugnant in the eyes of most. Respondent would have us find that a State's interest in protecting public figures from emotional distress is sufficient to deny First Amendment protection to speech that is patently offensive and is intended to inflict emotional injury, even when that speech could not reasonably have been interpreted as stating actual facts about the public figure involved. This we decline to do.

At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. "[T]he freedom to speak one's mind is not only an aspect of individual liberty-and thus a good unto itself-but also is essential to the common quest for truth and the vitality of society as a whole." *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 503-504, 104 S.Ct. 1949, 1961, 80 L.Ed.2d 502 (1984). We have therefore been particularly vigilant to ensure that individual expressions of ideas remain free from governmentally imposed sanctions. The First Amendment recognizes no such thing as a "false" idea. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974). As Justice Holmes wrote, "when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade

⁷ 485 U.S. 46, 108 S.Ct. 876, 99 L.Ed.2d 41 (U.S. 1988).

⁸ *Id.*

⁹ *Id.* at 876.

in ideas-that the best test of truth is the power of the thought to get itself accepted in the competition of the market....” *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (dissenting opinion).

We conclude that public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications such as the one here at issue without showing in addition that the publication contains a false statement of fact which was made with “actual malice,” *i.e.*, with knowledge that the statement was false or with reckless disregard as to whether or not it was true. This is not merely a “blind application” of the *New York Times* standard, see *Time, Inc. v. Hill*, 385 U.S. 374, 390, 87 S.Ct. 534, 543, 17 L.Ed.2d 456 (1967), it reflects our considered judgment that such a standard is necessary to give adequate “breathing space” to the freedoms protected by the First Amendment.¹⁰

When this jurisprudence is applied to the case at bar, the *Amicus Curiae* respectfully suggests that several legal conclusions must follow.

First, because Mr. Brilleaux’s satirical article forms part of the debate on an important public question, it is subject to the protections afforded by the First Amendment set forth in *Hustler Magazine*. Although print media has been the dominant source of public debate for much of American history, the internet has now become an indispensable source of news, commentary and discussion in our society. Just as the satirical interview published in print in *Hustler Magazine* in the late 1980’s was afforded constitutional protection, so should Mr. Brilleaux’s satirical article published online be afforded such protection today. Allowing Global Wildlife to enjoin Mr. Brilleaux from posting such an article online would have a chilling effect on free speech and freedom of the press in our community just as allowing Rev. Falwell to recover damages against *Hustler Magazine* would have done so.

Second, because Mr. Brilleaux’s piece was a work of satire, Global Wildlife cannot prevail. Global Wildlife has based its request for preliminary and permanent injunctions on its belief that it will suffer damages should Mr. Brilleaux be allowed to publish his article online, but has cited no authority that would support the granting of an injunction. As the *Hustler Magazine* case sets forth, the possibility of damages is not the test for determining whether speech can be restricted. Instead, the test is whether a work of satire was published with “actual malice”, which means that the speaker knew the statement was false, or acted with reckless disregard to whether it was

¹⁰ *Id.* at 876-881.

false.¹¹ Global Wildlife has not alleged the presence of actual malice in this case. More importantly, in cases involving parody and/or satire, “the test is not whether the story is or is not characterized as ‘fiction,’ ‘humor,’ or anything else in the publication, but whether the charged portions in context could be reasonably understood as describing actual facts about the plaintiff or actual events in which she participated. If it could not be so understood, the charged portions could not be taken literally.”¹² In such cases, where “the speaker intends his statements as outrageous parodies or caricatures expressing an opinion rather than making factual assertions...there is no consciousness that [the speaker] is publishing something false, because [the speaker doesn't] think [he's] publishing a statement of fact.”¹³ That is to say that in satire, a statement by definition cannot be made with reckless disregard for the factual accuracy of the statement, because, by definition, the speaker does not purport to be stating facts.

Third, it is clear that the piece at issue was, in fact, satirical. In considering whether a publication is parody or satire, “courts must analyze the words at issue with detachment and dispassion, considering them in context and as a whole, as the reasonable reader would consider them.”¹⁴ “As the relevant cases show, the hypothetical reasonable person - the mythic Cheshire cat who darts about the pages of the tort law - is no dullard. He or she does not represent the lowest common denominator, but reasonable intelligence and learning. He or she can tell the difference between satire and sincerity.”¹⁵ Material must be considered in context in deciding whether persons of ordinary intelligence and sensitivity could reasonably understand it as describing actual facts.¹⁶

It is of no moment that Global Wildlife asserts that some readers confused the HAN piece with real news. In cases such as this one, the question is not whether all readers actually

¹¹ *Hustler Magazine* at 881.

¹² *Pring v. Penthouse International, Ltd.*, 695 F.2d 438, 442 (10th Cir. 1982).

¹³ *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1194-1195 (9th Cir. Cal. 1989).

¹⁴ *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 158 (Tex. 2004);

¹⁵ *Patrick v. Superior Court*, 27 Cal. Rptr. 2d 883, 887 (Cal. App. 4th Dist. 1994)

¹⁶ *Haas v. Gill*, 527 So.2d 368, 372 (La.App. 5 Cir. 1988); *Pring v. Penthouse International, Ltd.*, 695 F.2d 438, 442 (10th Cir. Wyo. 1982). See also, *Letter Carriers v. Austin*, 418 U.S. 264 (1974); *Myers v. Boston Magazine Co., Inc.*, 403 N.E.2d 376, 379 (Mass. 1980) (courts must “examine the statement in its totality in the context in which it was uttered,” including the medium in which it was published and the audience to whom it was disseminated); *Walko v. Kean College*, 561 A.2d 680, 684 (N.J. Super. Ct. Law Div. 1988) (“Our case law has made it abundantly clear that a challenged publication must be viewed in context to determine whether or not it is subject to a defamatory meaning.”); *Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 655 (Tex. 1987) (“The court construes the statement as a whole in light of surrounding circumstances based upon how a person of ordinary intelligence would perceive the entire statement.”).

understood the satire, or “got the joke.” “The person of ‘ordinary intelligence’ ... is a prototype of a person who exercises care and prudence, but not omniscience, when evaluating allegedly defamatory communications. The appropriate inquiry is objective, not subjective. Thus, the question is not whether some actual readers were misled, as they inevitably will be, but whether the hypothetical reasonable reader could be.”¹⁷

In *Haas v. Gill*, 531 So. 2d 457, 460 (La. 1988), the Louisiana Supreme Court considered a defamation case involving a newspaper column that depicted a fictional radio conversation between the sheriff and another individual. In the sheriff’s suit for defamation, although the appellate court found that “a reasonable person of ordinary intelligence and sensitivity could interpret the column as describing actual facts about the sheriff or actual events in which the sheriff participated,” the state Supreme Court disagreed, reversed and granted summary judgment in favor of the newspaper.

Likewise, the Texas Supreme Court declined to impose liability on a newspaper that published a satirical article entitled “Stop the Madness” that was inspired by the actual arrest of a thirteen-year-old after he submitted a school assignment that contained purported “terroristic threats.”¹⁸ Specifically, “Stop the Madness” depicted the fictitious arrest and detention of a six-year-old girl for writing a book report about the cannibalism, fanaticism, and disorderly conduct in the popular children's book Where the Wild Things Are. The court declined to impose liability because “[w]hile the reader may initially approach the article as providing straight news, ‘Stop the Madness’ contains such a procession of improbable quotes and unlikely events that a reasonable reader could only conclude that the article was satirical.” *Id.* at 161. Like the parody in *Hustler Magazine*, it “could not reasonably be understood as describing actual facts about respondent or actual events in which he participated.”

Satire “relies for its force and effect on the idea of attribution of ideas and words to someone who never uttered them. The satiric effect emerges only as the reader concludes by the very outrageousness of the words that the whole thing is a put-on. The comic effect is achieved because the reader sees the words as the absurd expression of positions or ideas associated with

¹⁷ *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157 (Tex. 2004).

¹⁸ *Id.*, 146 S.W.3d at 147-48.

the purported author.”¹⁹ “If a parody could be actionable because, while recognizable as a joke, it conveyed an unfavorable impression, very few journalistic parodies could survive. It is not for the court to evaluate a parody as to whether it went too far ... as long as it is recognizable to the average reader as a joke, it must be protected or parody [would] cease to exist.”²⁰ This rationale also applies where the material is labeled as “news.” An article’s inclusion in the “News” section must be examined in the context of the nature of the particular publication, “because the reasonable reader must consider the type of publication in which the offending material appears.”²¹ The very nature of parody “is to catch the reader off guard at first glance, after which the ‘victim’ recognizes that the joke is on him to the extent that it caught him unaware.”²²

An examination of HAN’s website leaves no doubt as to its satirical nature. HAN is as much “traditional news” as Comedy Central’s “Daily Show” and “The Colbert Report,” Saturday Night Live’s “Weekend Update,” or the publication “The Onion.” In the context of the HAN’s website, the Global Wildlife parody could not be reasonably understood by persons of ordinary intelligence and sensitivity as describing actual facts about the Wildlife Refuge. The article describes an attack by a giraffe, whereby the giraffe clamped a hold on a person, shook the person repeatedly, then hurled the person into a nearby tree. The article then says that “mounted giraffe wranglers” were sent to the scene, and refers to the “Bedico CSI.” Ordinary persons who read HAN’s website will undoubtedly understand that the story, and indeed all “news” articles on HAN, are not, and are not intended to be, statements of facts. To suggest that a person of “reasonable intelligence and learning” cannot distinguish HAN from actual news would effectively imply that the hypothetical “reasonable person” is in fact the lowest common denominator. Such a result would inevitably swallow the rule because by definition the hypothetical reasonable person is not the lowest common denominator.

¹⁹ *New Times, Inc.*, 146 S.W.3d at 159 (quoting *Patrick*, 27 Cal. Rptr. 2d at 886).

²⁰ *Hamilton v. Prewett*, 860 N.E.2d 1234, 1244 (Ind. Ct. App. 2007) (quoting 50 Am. Jur. 2d Libel and Slander § 156 (2006)).

²¹ *Id.*, 146 S.W.3d at 159 (finding that the “News” heading was “used to delineate a section of the newspaper and *not* to indicate that articles contained in that section were “traditional news”); *see also San Francisco Bay Guardian v. Superior Court*, 21 Cal.Rptr.2d 464, 466 (Cal. Ct. App. 1993) (noting that “the question of whether the average reader would have recognized the issue as a parody and the letter as a part of the joke depends upon a view of the entire issue, i.e., the ‘totality of circumstances’”).

²² *San Francisco Bay Guardian*, 21 Cal.Rptr.2d at 466.

When the Global Wildlife article is considered with regard to the context in which it appears its satirical nature is patently evident. HAN's website contains stories about suicide golf cart missions, an alligator that sues (and writes emails), a tailor-made census for Tangipahoa Parish, Afghan election officials being deployed in Tangipahoa Parish, Tangipahoa Parish School Board filing suit against all of their students, and various other "news" articles. It would be a stretch of reason of immeasurable proportions to suggest that such articles would mislead a person of ordinary intelligence. Such a person would believe that Tangipahoa Parish was being traumatized by suicide golf cart missions, that a local alligator writes emails, that local election fraud resulted in the deployment of 200 Afghan election monitors to Tangipahoa, that Tangipahoa's school board was suing all 19,451 of its students for damaging the board's reputation, and numerous other peculiar happenings in and around Hammond, Louisiana. Therefore, the article cannot be taken literally, and falls within the First Amendment privilege. HAN's content generally, and the Global Wildlife parody in particular, is characteristic of journalistic parody entitled to protection. A contrary conclusion would effectively eliminate parody as a genre of protected expression.

Accordingly, the *Amicus Curiae* respectfully suggests that Global Wildlife's request for a preliminary injunction should be denied.

CONCLUSION

Freedoms of speech and of the press form the bedrock upon which our republic was built. Their primacy and importance are evidenced by their placement in the First Amendment of the Bill of Rights. However, implementing these freedoms is not always easy. As the Supreme Court has noted, free speech can be offensive. It can even be harmful. Sometimes damage is its intended consequence. Despite this, the potential for harm does not justify the restriction of speech when that speech concerns public officials, public figures or important public questions. The reason for this is clear. The consequences of restricting speech to save some from harm or offense would be much worse than that harm or offense, itself. If we, as a society, create an atmosphere that chills free expressions of speech and of the press, we will begin a descent down a slippery slope towards the erosion of the very values upon which our country was founded.

WHEREFORE, the American Civil Liberties Union (“ACLU”), *Amicus Curiae* herein, offers the Court this brief and prays that after all due proceedings are had judgment will be rendered in favor of Defendant Nicholas Brilleaux and against Global Wildlife Foundation denying its request for a preliminary injunction.

Respectfully submitted this 11th day of March 2010,

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF LOUISIANA

By: 
Michael D. Bass Bar Roll No. 27954
306 East North Street
P. O. Drawer 1329
Opelousas, Louisiana 70571-1329
Telephone: (337) 948-8201
Facsimile: (337) 942-4521

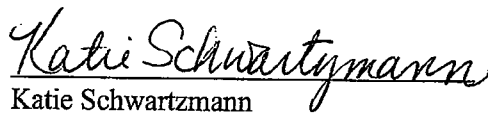
and

Katie Schwartzmann, La. Bar No. 30295
P.O. Box 56157
New Orleans, LA 70156

*Attorneys for Amicus Curiae
American Civil Liberties Union
Foundation of Louisiana*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Amicus Curiae* Brief in Support of Defendant was served to all counsel of record, via facsimile and U.S. Mail, this 11th day of March 2010.


Katie Schwartzmann