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Court of Appeals

of the

State of New York

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HAPPY,

Petitioner-Appellant,

– against –

JAMES J. BREHENY, in his official capacity as Executive Vice President and General Director of Zoos and Aquariums of the Wildlife Conservation Society and Director of the Bronx Zoo and WILDLIFE CONSERVATION SOCIETY,

Respondents-Respondents.

AMICI CURIAE BRIEF OF AMERICAN VETERINARY MEDICAL ASSOCIATION, NEW YORK STATE VETERINARY MEDICAL SOCIETY, AND AMERICAN ASSOCIATION OF VETERINARY MEDICAL COLLEGES IN SUPPORT OF RESPONDENTS

Philip S. Goldberg (Admitted *pro hac vice*)
Christopher E. Appel (Admitted *pro hac vice*)
SHOOK HARDY & BACON L.L.P.
1800 K Street N.W., Suite 1000
Washington, D.C. 20006
Tel: (202) 783-8400
Fax: (202) 783-4211
pgoldberg@shb.com
cappel@shb.com

Scott A. Chesin
*Counsel of Record
SHOOK HARDY & BACON L.L.P.
1325 Avenue of the Americas,
28th Floor
New York, NY 10019
Tel: (212) 779-6106
Fax: (929) 501-5455
schesin@shb.com

Attorneys for *Amici Curiae*

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

Pursuant to Section 500.1(f) of the Rules of Practice of the New York State Court of Appeals, counsel for proposed *amici curiae* American Veterinary Medical Association ("AVMA"), New York State Veterinary Medical Society ("NYSVMS") and American Association of Veterinary Medical Colleges ("AAVMC") certifies that AVMA, NYSVMS and AAVMC have no corporate parents, subsidiaries or affiliates.

Dated: September 24, 2021

Scott A. Chesin
SHOOK HARDY & BACON L.L.P.
1325 Avenue of the Americas, 28th Floor
New York, NY 10019
Attorney for *Amici Curiae*

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are the American Veterinary Medical Association ("AVMA"), New York State Veterinary Medical Society ("NYSVMS"), and American Association of Veterinary Medical Colleges ("AAVMC"). These organizations have a substantial interest in ensuring that New York laws promote sound animal ownership and welfare policies through clearly defined rights and responsibilities. Providing animals with the same personhood status recognized in humans, including for the purposes of a writ of habeas corpus, is contrary to this goal. *Amici* urge the Court to affirm that an animal is legally the property of its owners, recognizing that animals are cherished and protected by the laws of this State in ways different from inanimate "things" and in ways that advance animal welfare.

Established in 1863, the AVMA is the national voice for the veterinary profession. The AVMA has more than 97,000 members, representing about 75% of U.S. veterinarians. The AVMA is committed to advancing the science and practice of veterinary medicine, including its relationship to public health, biomedical science, the environment, and agriculture. It also advocates for improving food safety and security, advancing veterinary medical education, enhancing animal and human health and welfare, strengthening biomedical research, and fostering a

[1] No party or its counsel authored this brief in whole or in part; and no party, party's counsel, or other person or entity—other than *amici curiae* or their counsel—contributed money intended to fund preparing or submitting the brief.

healthy environment. It achieves these goals through research, education, collaboration, policy and professional guidance, accreditation, advocacy, development of legislation and regulations, and the filing of *amicus curiae* briefs.

The NYSVMS is a non-profit member association of more than 2,000 licensed veterinarians in New York State. It supports and represents those members through a range of programs, including advocating to the state government and providing continuing education. NYSVMS members are actively involved in making sure that the profession develops the best professional guidelines and laws, and are up-to-date with new developments. It also advocates for responsible pet ownership.

Founded in 1966, the AAVMC represents more than 40,000 faculty, staff and students across the global academic veterinary medical community. The AAVMC's member institutions promote and protect the health and well-being of people, animals and the environment by advancing the profession of veterinary medicine and preparing new generations of veterinarians to meet the evolving needs of a changing world. Member institutions include the Council on Education (COE) accredited veterinary medical colleges and schools in the United States, Canada, Mexico, the United Kingdom, Europe, Asia, Australia, and New Zealand as well as departments of veterinary science and departments of comparative medicine in the United States.

QUESTIONS PRESENTED

1. Does Happy have the common law right to bodily liberty protected by habeas corpus?

2. If Happy's common law right to bodily liberty protected by habeas corpus is recognized, does habeas corpus permit sending her to an elephant sanctuary?

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Nonhuman Rights Project ("NRP") and its *amici* are seeking to use Happy the elephant and this writ of habeas corpus to completely redefine the human-animal legal relationship. They want to treat animals as humans for conferring personhood rights under the law, appoint themselves as third parties that can invoke an animal's "personhood" rights, and direct the ownership interests that people and organizations can have in their animals. The implications of granting this writ are profound. As a neighboring Connecticut court stated in a similar case, changing the legal categorization of animals to "persons" would "upend this state's legal system." *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839, 844 (Conn. Ct. App. 2019). The legal regime governing all animals, in New York and around the country, has always been based on ownership. This system protects animals—in zoos, homes, research facilities, and farms—through well-defined rights and responsibilities. It should be maintained and strengthened, not discarded.

NRP has made no secret that wholesale reclassification of animals is its ultimate goal. It and other animal rights groups are seeking to confer legal "personhood" on many kinds of animals, including "gorillas, orangutans, bonobos, Atlantic bottlenose dolphins, African gray parrots, African elephants, dogs and honeybees"—regardless of the markers of intelligence and autonomy they say here are the rationales for granting this status for elephants. *Beastly Behavior?*, The Wash. Post, June 5, 2002, at C1 (quoting Steven Wise). NRP said it plans "to file as many suits as we have the funds to be able to pursue." Michael Mountain, *Lawsuit Filed Today on Behalf of Chimpanzees Seeking Legal Personhood*, Nonhuman Rights Project (Dec. 2, 2013). Already, groups have filed writs of habeas corpus for elephants and chimpanzees, sought to apply the Thirteenth Amendment against slavery to orcas, and filed suit on behalf of the world's whale, porpoise, and dolphin populations against certain U.S. Navy operations. *See Tilikum v. SeaWorld Parks & Entm't, Inc.*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012) and *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004). Federal and state courts have properly rejected these efforts, uniformly refusing to designate animals as legal "persons."

The veterinary community is filing this brief because it is gravely concerned that redefining the human-animal legal system in this way will negatively impact animals' welfare. History has shown that animal ownership is not only permissive, it is protective. Congress and state legislatures, as well as courts, have long enacted

important safeguards and regulations that promote responsible animal ownership, deter abuse, and advance animal care. Changing these rights and responsibilities, as proposed here, would create instant, enormous, and pervasive confusion. It could limit—or even eliminate—the ability of animal owners to choose the proper course of treatment for their animals by subjecting their decisions to outside intervention by third parties. If animals do not receive the timely care they need, including during legal battles over their fate, they are the ones who will suffer. Ownership is the true pro-animal position. Animal owners, including zoos, should remain responsible and accountable for properly caring for and treating their animals. Because this lawsuit promotes animal personhood rights above animals' welfare, it should be rejected.

To avoid these realities, NRP is asking the Court to ignore this larger picture, including these considerable, negative ramifications of granting this writ of habeas corpus. *See* Br. at 18 (encouraging Court to "leave unsettled" these fundamental aspects of human-animal legal relationship) and Pet. at 17 ("Thus the concern that recognizing Happy's common law right to bodily liberty protected by habeas corpus would lead to a 'labyrinth' of unanswered questions is irrelevant."). The truth, as the Connecticut court explained, is that conveying rights for "persons" to animals "is more than what the petitioner purports it to be." *Commerford*, 216 A.3d at 844.

Amici respectfully urge the Court to deny this writ. Granting advocacy groups and others the right to file legal actions in an animal's name puts private agendas

over animals' welfare. To the extent limitations should be put on ownership to protect animals' welfare, legislatures and courts can continue to set them. Here, the Animal Welfare Act along with industry accreditation standards, which are routinely updated, govern the treatment of zoo animals. There is no need to upend the entire human-animal legal regime. This system protects animals and should be upheld.

ARGUMENT

I. COURTS HAVE CONSISTENTLY AND UNIFORMLY ADHERED TO THE OWNERSHIP REGIME FOR GOVERNING THE HUMAN-ANIMAL RELATIONSHIP

In New York, as in all states, the law regarding animal stewardship is based entirely on ownership principles. State and federal laws set forth the right to own animals, which kinds of animals can be owned by whom, and guidelines for and limitations on ownership rights regarding animal treatment and care. These laws include the right of zoos to own elephants and other animals in their facilities, individuals to own companion animals, and dairy farms throughout New York to own cattle. Any animal that is not "legally acquired and held in private ownership" in New York is owned by the State. N.Y. Envt'l Conserv. L.: Ch. 43-B § 11-0105. Thus, all animals in New York are owned. As the Oregon Supreme Court aptly stated: "Animals generally therefore can be lawfully owned and possessed as much as other property can be. But the welfare of animals is subject to a series of explicit

statutory protections that are distinct to animals." *State v. Newcomb*, 375 P.3d 434, 440 (Or. 2015).

NRP, People for Ethical Treatment of Animals ("PETA"), the Animal Legal Defense Fund ("ALDF"), and other groups have repeatedly challenged this ownership model in a variety of ways, looking to find a court that will legally equate animals with people, thereby denying Americans the right to own animals. As alluded to above, these groups have filed several writs of habeas corpus for animals, mostly elephants and chimpanzees; all have been rejected. *See People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D. 3d 148, 152 (3d Dep't 2014) (it is "inappropriate to confer upon chimpanzees the legal rights—such as the fundamental right to liberty protected by the writ of habeas corpus—that have been afforded to human beings"); *Commerford*, 216 A.3d at 846 (finding no rationale for extending common law "with respect to disturbing who can seek habeas corpus relief"); and *Rowley v. City of New Bedford*, 159 N.E.3d 1085 (Mass. Ct. App. 2020) (unpublished) (habeas corpus laws "unambiguously refer solely to 'person,' and the term person has generally been synonymous only with human beings").

In addition, PETA filed suit against SeaWorld for declaratory and injunctive relief that the aquarium's holding of orca whales violated slavery and involuntary servitude provisions of the Thirteenth Amendment. *See Tilikum*, 842 F. Supp. 2d at 1260 (alleging the whales were "being 'held captive'"). Paralleling the arguments

made here, PETA alleged orcas "engage in many complex social, communicative, and cognitive behaviors" and orcas in an aquarium cannot "make conscious choices" for their mental and physical well-being. The court rejected the claim, concluding "the Thirteenth Amendment only applies to 'humans.'" *Id.* at 1262. The court made clear that animals have legal protections—"there are many state and federal statutes affording redress to Plaintiffs, including, in some instances, criminal statutes that punish those who violate statutory duties that protect animals"—but the orcas remain SeaWorld's property, not legal persons. *Id*. at 1264 (citation omitted).

In asking the Court to expand the definition of persons to include animals here, NRP invokes the traditional role of courts to define the common law. Over the past forty years, though, a robust body of common law has developed where courts around the country, including in New York, have consistently refused to redefine the legal status of animals. In these cases, ALDF and others have sought to leverage the "property" classification as a rallying cry for changing available tort law damages, arguing people should be able to collect noneconomic losses when a companion animal is negligently injured or killed—similar to loss of companionship for a person in the immediate family. *See* Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Value, and Animal Welfare,* 6 Stan. J. of Animal L. & Pol'y 30 (2013). These lawsuits have arisen in at least 35 states. Although many

courts have been sympathetic to the objection to the "property" label, courts have uniformly rejected these common law efforts to re-categorize pets as anything other than property, including as persons, children, or relatives of the owners. *See id.*

As these courts have explained, categorizing animals as "property" is necessary under the legal regime for animal ownership. In neighboring New Jersey, the state Supreme Court heard a case where a person sought negligent infliction of emotional distress damages after her dog was killed in her presence. *See McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012). New Jersey allows the recovery of such damages for witnessing the death of a close family member, and the owner argued her pet should satisfy this criteria. The court denied the claim, stating it understood plaintiff's considerable attachment to her dog, but the law "cannot permit recovery for watching the death of a non-human." *Id*. at 326. The Supreme Court of Wisconsin, in a comparable case, stated that had the plaintiff "been a bystander to the negligent killing of her human best friend, our negligence analysis would be complete. However, as we have previously noted the law categorizes dogs as property." *Rabideau v. City of Racine*, 627 N.W.2d 795, 801 (Wis. 2001). In Virginia, the state Supreme Court also denied such a claim; there a woman had produced psychiatrist testimony describing her relationship with her dog as "like a mother/child unit." *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 183 (Va. 2006). The

court reaffirmed that "the law in Virginia, as in most states that have decided the question, regards animals, however beloved, as property." *Id.* at 186-87.[2]

These courts further explained that any discomfort with the "property" label should not be the basis for changing legal rights under the common law. In many cases, the courts took pains to point out that this "property" designation does not undermine the value society places on animals. In a case that made national headlines, the Texas Supreme Court explained "[t]he term 'property' is not a pejorative but a legal descriptor, and its use should not be misconstrued as discounting the emotional attachment that pet owners undeniably feel." *Strickland v. Medlen*, 397 S.W.3d 184, 186 (Tex. 2013). The Wisconsin Supreme Court, in a widely cited ruling, discussed this point in depth, noting it is "uncomfortable with the law's cold characterization of a dog . . . as mere 'property.'" *Rabideau*, 627 N.W.2d at 798. It continued, "[t]o the extent this opinion uses the term 'property' in describing how humans value the dog they live with, it is done only as a means of applying established legal doctrine to the facts of this case." *Id.* Thus, any suggestion that an aversion to the "property" label should motivate reclassifying animals as

[2] *See Goodby v. Vetpharm*, 974 A.2d 1269 (Vt. 2009) (animals have special characteristics as personal property); *Hey v. Moran*, No. 2002-569 (PC 01-3682) (R.I. 2003) ("under Rhode Island law, a dog is classified as property"); *Strawser v. Wright*, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992) (while the court "sympathize[d] with one who must endure the sense of loss which may accompany the death of a pet," it "cannot ignore the law"); *Ammon v. Welty*, 113 S.W.3d 185, 187 (Ky. Ct. App. 2002) ("The affection an owner has for, and received from, a beloved dog is undeniable. It remains, however, that a dog is property, not a family member.").

legal persons is empty rhetoric. It is not an excuse for creating new and uncertain law, particularly as profound as sought here.

Further, a series of cases from the Oregon Supreme Court demonstrates the limits of common law ownership in animals when an owner fails to provide an animal with adequate care under the law, thereby clearly setting animals apart from inanimate "things." In *State v. Fessenden*, neighbors reported to police that defendant's horse appeared to be starving. 333 P.3d 278, 280 (Or. 2014). An officer with special training in animal husbandry and cruelty observed the horse from the neighbor's property and identified signs of emaciation and critical illness. *See id.* He reasonably believed if he took the time to obtain a warrant, the horse might collapse and suffer a fatal injury. *See id.* He entered defendant's property, seized the horse, and took it to a veterinarian. *See id.* The Oregon Supreme Court held the warrantless action was justified by the exigent circumstances exception to protect property—not emergency aid exception that applies only to persons. *See id.* at 288.

The Oregon Supreme Court expounded on the distinction among animals, persons, and inanimate "things" in a case involving a malnourished dog. *See Newcomb,* 375 P.3d at 435-36. The court explained, "there are many exceptions to a person's ability to lawfully own and possess certain animals." Although state law "prohibits humans from treating animals in ways that humans are free to treat other forms of property," it "does not place them on par with humans." *Id*. at 441. "[W]e

accept that a person who owns or lawfully possesses an animal, and who thus has full rights of dominion and control over it, has a protected privacy interest that precludes others from interfering with the animal in ways and under circumstances that exceed legal and social norms." *Id.* Thus, animals are treated as a special type of property that requires lawful, humane treatment by their owners.

These cases are fully consistent with New York law, which defines persons as "an individual, a co-partnership, joint stock company or corporation." N.Y. Envt'l Conserv. L.: Ch. 43-B § 11-0103(19)(a). They also clearly demonstrate that NRP's assertion that if the law does not treat animals as an inanimate "thing" then it must be given personhood is simplistic and wrong. *See* Reply Br. at 2. Here, the Bronx Zoo has the legal right to own Happy, and that ownership interest is governed by Federal and State laws for zoo animal ownership. If NRP and its *amici* believe elephants, chimpanzees, orcas, or other animals should no longer be owned by anyone, they should take this fight to Congress or the State Legislature, which can weigh the interests of the many stakeholders as well as the societal value people place on zoos, aquariums, and other venues that provide millions of people the opportunity to meet, learn about, and cherish elephants and many other animals.

II. ANIMAL OWNERSHIP LAWS REFLECT WIDE-RANGING ROLES OF ANIMALS IN SOCIETY AND PROMOTE ANIMAL WELFARE THROUGH ACCOUNTIBILITY

A. NRP's Proposal to Change the Status of Animals Draws Legal Distinctions in a Highly Subjective, Unprincipled Manner

In this attempt to thwart Respondent's right to own Happy, NRP is seeking to establish a blueprint that would allow any self-selected third party to infringe on an owner's right to lawfully possess and care for an animal. The criteria it offers this Court as to which animals should qualify for legal personhood—namely autonomy and intelligence—are vague, subjective, and malleable. Writs of habeas corpus and the human-animal legal regime should not be subject to such arbitrary line-drawing.

First, courts have been highly skeptical of allowing third parties, particularly advocacy groups such as NRP, PETA and ALDF, to bring cases on behalf of animals. The Ninth Circuit in *Cetacean* took notice that the plaintiff was a "self-appointed attorney" who formed a group for the purpose of filing the lawsuit called "The Cetacean Community" and purported to represent "all of the world's whales, porpoises, and dolphins." 386 F.3d at 1171. Of particular concern, as the American Bar Association's Journal reported, is the animal rights and private agendas of the groups can often differ from the interests of those they purport to represent. *See* Terry Carter, *Beast Practices: High-Profile Cases Are Putting Plenty of Bite into the Lively Field of Animal Law*, 93-Nov A.B.A. J. 39, 41 (2007) (quoting a lawyer acknowledging this tension and saying their sole interest is to "evolve the law").

This third-party issue came to a head in *Naruto v. Slater*, where the Ninth Circuit found PETA was employing Naruto "as an unwitting pawn in its ideological goals." 888 F.3d 418, 421 n.3 (9th Cir. 2018). PETA filed the action for Naruto, a monkey, against a wildlife photographer claiming the monkey qualified as a person for asserting copyright infringement claim after the photographer published selfies the monkey took with the photographer's camera. *See id*. at 420. After oral argument, when it appeared PETA was losing the appeal, PETA sought to settle the case, dismiss the appeal, and vacate the district court's adverse judgment. *See id*. at 421 n.3. The Ninth Circuit noted PETA "abandoned Naruto's substantive claims in what appears to be an effort to prevent the publication of a decision adverse to PETA's institutional interests." *Id.* The court then denied PETA's standing to represent Naruto, concluding that regardless PETA "fails to meet the 'significant relationship' requirement and cannot sue as Naruto's next friend." *Id.* at 421.

In a pointed concurrence, Judge Smith cautioned, "[a]nimal-next-friend standing is particularly susceptible to abuse. Allowing next-friend standing on behalf of animals allows lawyers (as in Cetacean) and various interest groups (as here) to bring suit on behalf of those animals or objects *with no means or manner to ensure the animals' interests are truly being expressed or advanced*." *Id*. at 432. "Such a change would fundamentally alter the litigation landscape. Institutional actors could simply claim some form of relationship to the animal or object to obtain standing

and use it to advance their own institutional goals." *Id*. "Because the 'real party in interest' can actually *never credibly articulate its interests or goals*, next-friend standing for animals is left at the mercy of the institutional actor to advance its own interests, which it imputes to the animal or object with *no accountability*." *Id.*

Here, NRP is such a self-selected group seemingly advancing its institutional public policy and financial interests irrespective of whether Happy prefers staying at the only home he has known. NRP has been raising money in connection with this writ, selling apparel, tote bags and mugs as well as holding virtual fundraising events. As NRP states in its annual report, this fundraising campaign has helped place NRP "at a healthy operating surplus."[3] Further, transferring Happy to a different facility could provide a platform for NRP to continue fundraising in Happy's name. Undoubtedly, if this writ were granted groups would vie to "represent" animals in zoos, aquariums, and other facilities in an effort to sustain their organizations. Yet, none of them would truly be speaking for those animals.

Second, the qualities—namely intelligence and autonomy—that NRP and its *amici* argue make elephants suitable for legal personhood are not bright-line principles, but a spectrum upon which many animal species fall. As *amici* philosophers point out in their brief in this case below, all species are "the product[s]

[3] Nonhuman Rights Project, 2020 Annual Report, p. 30 at https://www.nonhumanrights.org/content/uploads/2020-Annual-Report.pdf?emci=d6ec9323-9c39-eb11-9fb4-00155d43b2cd&emdi=ea000000-0000-0000-0000-000000000001&ceid

of gradual evolutionary processes that create an array of similarities." Br. at 3; *see also* Nussbaum Amicus Br. at 1 (suggesting rights should develop "with the capabilities of each animal"). Here and in *Lavery*, NRP claims elephants and chimpanzees, respectively, are intelligent and autonomous enough to qualify for personhood, but they do not say where the line is drawn and which species fall above and below this line. There are no *legal* principles, such as the ability to engage in societal rights and responsibilities, for their legal line-drawing.

Not surprisingly, in other cases, third party groups have suggested different criteria for personhood. In *Tilikum*, PETA suggested orcas should be freed from ownership because orcas appear to demonstrate "mental stress" and "behavioral abnormalities" when living in an aquarium. 824 F. Supp. 2d at 1261. Others have suggested that legal personhood rights should be conveyed to any animal that is considered a "sentient" being. *See* Diane Sullivan & Holly Vietzke, *An Animal Is Not an iPod*, 4 J. Animal L. 41, 43 (2008) ("With a recognition that animals are sentient creatures capable of experiencing great pain should come a realization that animals are not property—not innate objects—and our legal system must recognize this."). Counsel in this case has argued companion animals are "functionally children." Brief of the Appellant, Goodby v. Vetpharm, Inc., No. 2008-030 (Vt. Mar. 1, 2008), at 28. Others have suggested all "vertebrate animals" should be able to enter contracts, file lawsuits, and engage in other legal actions. *See* David Favre,

Living Property: A new Status for Animals within the Legal System, 93 Marq. L. Rev. 1021, 1047 (2010).

Courts have expressed their concern that granting legal rights to animals based on any such criteria is unprincipled. There is "no sensible or just stopping point." *Rabideau*, 627 N.W.2d at 802. It would be impossible "to cogently identify the class of" animals for legal rights, as arguments could be made for "an enormous array of living creatures." *Id.*; *see also Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1126 (Ohio Ct. App. 2003) (finding "difficulty in defining . . . classes of animals for which" rights should be conveyed). In addition, "[t]here are fears of flooding the courts with spurious and fraudulent claims; problems of proof . . . [and] exposing [a] defendant to an endless number of claims." *Myers v. City of Hartford*, 853 A.2d 621, 625 (Conn. Ct. App. 2004). As the Texas Supreme Court concluded, given the "menagerie of animals" that could merit such treatment, any such line-drawing would "resemble judicial legislation." *Strickland*, 397 S.W.3d at 195.

Finally, the assertion of a sudden or recent shift in societal values toward animals is a red herring and undermined by the recent and extensive case law discussed above.[4] Humans have long valued animals, and to the extent there has been

[4] Their own rhetoric belies this proposition. Mr. Wise has said "dogs have been mankind's companion throughout the ages." Brief of the Appellant, Goodby v. Vetpharm, Inc., No. 2008-030 (Vt. Mar. 1, 2008), at 19. Animal rights lawyer Chris Green noted dogs were brought on the Mayflower and "were the first domesticated animals" in America. Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 Animal L. 163, 165 n.5 (2004). Another advocate, citing the biblical story of a man who raised a lamb like a child, stated:

a shift in attitudes, it is for enhanced animal welfare protections, not legal personhood. Indeed, respected leaders in the animal law field have acknowledged this rift between animal rights activism, as here, and animals' welfare. *See* Joyce Tischler, *A Brief History of Animal Law, Part II*, 5 Stan. J. of Animal L. & Pol. 27, 52 (2012). Tischler, a founder of ALDF, explained: "Not every animal lawyer has greeted [the animal rights approach] with enthusiasm" with some urging students and practitioners "to step away from the focus on animal rights and instead work for progressive welfare reforms . . . [which] has gained a good deal of traction." *Id*.

Most Americans value animal ownership. According to pre-COVID statistics, 58 percent of American households owned animals, including 50 percent of New York households. *See* Am. Veterinary Med. Ass'n, 2017-2018 U.S. Pet Ownership & Demographics Sourcebook.[5] During the pandemic, ownership has increased. Americans also widely visit zoos and aquariums, are generally not vegetarians, and accept the benefits of ethical and humane animal research. Awarding legal personhood to animals is at odds with these mores. To this point, some legislatures have passed resolutions recognizing that "animals are sentient beings capable of experiencing pain, stress and fear" in an effort to advance proper treatment of

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"even in biblical times, the law recognized that animals in close relationship with people were considered more than mere property." Christopher D. Seps, *Animal Law Revolution: Treating Pets as Persons in Tort and Custody Disputes*, 2010 U. Ill. L. Rev. 1339, 1342 (2010).

[5] https://www.avma.org/sites/default/files/resources/AVMA-Pet-Demographics-Executive-Summary.pdf

animals. *See, e.g.,* ORS 167.305. Courts in these states, including Oregon, have not used these laws to extend legal personhood in animals. There is no support for allowing third parties to interfere with people's ownership interests in their animals. Granting this writ would be out-of-step with the law and role of animals in society.

B. Conferring Legal Personhood on Animals Would Undermine Animal Welfare and Lead to Significant Adverse Consequences

As indicated, the veterinary community is deeply concerned about the adverse implications of allowing such outside groups to interfere with or possibly harass animal owners in their ability to own, direct, and care for their animals. If this writ is granted, a third party could readily petition a court for custody of an animal if it disapproves of how the owner is lawfully treating the animal, to stop an owner from euthanizing an animal (which is one of the hardest decisions of ownership), or to prohibit spaying or neutering an animal by arguing the animal would be deprived of its reproductive rights. None of these outcomes would seem farfetched anymore.

These concerns are not new. For twenty years, animal rights groups have been urging municipalities to change the terminology in their city ordinances from pet "owners" to "guardians." *See Ownership versus Guardianship*, Am. Veterinary Med. Ass'n (2005).[6] Some advocates have insisted these guardianship laws would not impose the human ward-guardian legal system onto animals and their owners,

[6] https://www.avma.org/advocacy/state-local-issues/state-advocacy-issue-ownership

but are simply meant to convey a greater sense of stewardship. Others, though, have openly acknowledged that guardianship laws would allow them to raise new legal questions if there are conflicting views "as to the best interests of an animal." Position Statement on Ownership/Guardianship, ASPCA.[7] As a veteran legal commentator asked: "Will there come a time when dogs can sue for a new guardian—or to avoid being put to sleep?" Jeffrey Toobin, *Rich Bitch*, The New Yorker, Sept. 29, 2008.[8] For these reasons, neutral public policy groups have opposed any such changes to animal ownership laws. *See* Council of State Governments, *Resolution on Animal Guardianship and Liability Legislation* (2004).

As people have appreciated, changing the ownership model would have adverse impacts on the ability of owners to treat livestock, companion animals, and animals owned by various types of entities. Consider an elderly dog that has developed a severely arthritic hip. Currently, an owner has several treatment options available, from hip replacement surgery to less invasive and less costly alternatives. Some owners may opt for the hip replacement surgery, but others may choose one of the other options. If an animal rights group believes hip replacement is in the best interest of the animal, it could force the dog's owner to accept that option regardless

[7] https://www.aspca.org/about-us/aspca-policy-and-position-statements/position-statement-ownershipguardianship; *see also* Green, *supra*, at 235 ("[I]f a legal conflict does arise over an animal's best interest, who will be the arbiter of any decision?").

[8] http://www.newyorker.com/reporting/2008/09/29/080929fa_fact_toobin

of the cost or dog's discomfort. Critical questions would also be raised about the legal implications should a veterinarian disagree with an owner's treatment decision, such as whether to treat a compound fracture or select euthanasia. The veterinarian may have to seek a court's directive, leaving the animal in pain and with an increased risk of an infection while awaiting the court's decision. Another concern is that certain veterinary records are confidential by law, but may have to be disclosed to any third party who believes an animal should be treated differently.

Equally troubling would be the impact on the broader community. From a human health perspective, controlling animal disease in the food chain, as well as rabies and other zoonotic disease, are important functions of veterinary services. The government also needs to control and quarantine dangerous animals and require vaccinations. And, the concept of assistance or working animals, including guide dogs, hearing dogs, and police dogs, may be objectionable to some animal rights groups. Third party lawsuits could interfere with all of these important functions. The same is true for biomedical research, which contributes to improving the care of both people and animals, and food animal husbandry. Outside groups could also interfere with animal ownership transfers, such as breeder sales, taking over ownership after a parent dies, or the purchasing of livestock.[9] In New York, the dairy

[9] New York's law prohibits "companion animal stealing." N.Y. Agric. & Mkts. Law § 366. This statute would be vitiated if a person or entity stealing a pet claims the animal possessed enough intelligence and "autonomy" to prefer its new home.

industry, which is "by far the state's largest agricultural commodity," could be irreparably harmed and harassed by lawsuits. Press Release, *DiNapoli: Farms Generate $4.8 Billion for New York's Economy*, Sept. 20, 2018 (announcing a report by the State Comptroller).[10] Also, if a companion animal injures a neighbor's child, the owner's insurance company might deny coverage for the child's treatment because the animal would no longer be defined as property. The list goes on.

These fundamental aspects and questions related to rights and responsibilities of animal ownership are not "irrelevant" and should not be "left unsettled." As NRP acknowledges, public policy is integral to the common law's evolution. Reply Br. at 13. *Amici* deeply care about animals and urge the Court not to undermine the role, responsibilities, and legal accountability of owners when it comes to providing care for their animals. The current ownership structure works, and the blunt tool of a writ of habeas corpus cannot adequately address these many adverse ramifications.

III. LEGISLATURES ARE THE APPROPRIATE BODIES TO DEVELOP THE FUNDAMENTAL LEGAL RIGHTS AND RESPONSIBILIES GOVERNING ANIMAL WELFARE

The multitude of public policy considerations discussed above demonstrate that determining the rights and protections afforded to animals is ideally suited for

[10] https://www.osc.state.ny.us/press/releases/2018/09/dinapoli-farms-generate-48-billion-new-yorks-economy

the legislature.[11] The legislature can balance the interests of the many affected stakeholders—from zoos, animal sanctuaries and other entities that keep animals; to owners of companion animals or animals contributing to the food supply; to veterinarians and other animal health care providers; to animal rights groups.

The New York State Legislature, as well as legislatures around the country, has long exercised this authority to provide greater legal protections for animals as societal values have evolved. These legal reforms include enacting animal cruelty laws as well as laws related to animals' welfare, the environment, and animal conservation efforts. *See, e.g.,* Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part II*, 19 Animal L. 347, 347 (2013). In fact, New York led the "first wave" of anti-cruelty laws in the United States in the early 19th century, adopting an influential 1829 law that criminalized certain acts of animal cruelty. David Favre & Vivien Tang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 Det. C.L. Rev. 1 (1993). New York adopted other anti-cruelty statutes during the 1860s, paving the way for many states to enact comparable laws within the next decade. *See id.*; *see also* N.Y. Rev. Stat. ch. 375, §§ 1-10 (1867).[12]

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[11] *See, e.g., Kondaurov v. Kerdasha*, 629 S.E.2d 181, 187 (Va. 2006) (treating a pet as a child for allowing litigation damages "would amount to a sweeping change in the law . . . a subject properly left to legislative consideration").

[12] The first animal anti-cruelty law in what is now the United States dates back to 1641, when the Massachusetts Bay Colony prohibited "any Tirrany or Crueltie towards any Bruite creature" in a set of laws called the "Body of Liberties." Stephen Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. 748, 749-50 (2011).

Congress also has acted over the years to protect animals through federal laws such as the "Twenty-Eight Hour Law" of 1873, which alleviated some of the harsh conditions in the transportation of cattle and other farm animals. *See* Geoffrey S. Baker, *Humane Treatment of Farm Animals: Overview and Selected Issues*, No. 95-1175 ENR, Congr. Res. Serv. (1995), at 21. Early in the 20th century, Congress adopted the Lacey Act to combat illegal commercial hunting and preserve wild animals. *See* Robert S. Anderson, *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 Pub. Land L. Rev. 27, 36-38 (1995). It has since set forth standards for handling livestock, *see* 7 U.S.C. §§ 1901 *et seq.*, and protected large swaths of animals through the Endangered Species Act and Preventing Animal Cruelty and Torture Act, among many others. *See* Henry Cohen, *Federal Animal Protection Statutes*, 1 Animal L. 143 (1995).

Of relevance here, Congress enacted the Animal Welfare Act in 1966 to regulate the treatment and care of animals in zoos and other environments. 7 U.S.C. § 2131 *et seq.* Under this Act, the Secretary of Agriculture promulgated standards governing "the humane handling, care, [and] treatment . . . of animals by dealers, research facilities and exhibitors," including zoos. *Id*. at § 2143(a)(1). Zoos must also meet the standards set forth by the Association of Zoos & Aquariums ("AZA") in order to be accredited. *See AZA Standards for Elephant Management & Care*

(Revised April 2012).[13] These standards are reviewed regularly and "revised to include new information and new standardized protocols and forms," are intended to "result in excellent overall elephant well-being," and allow zoos "to contribute to elephant conservation." *Id.* When needed, some states, such as California, have enacted further restrictions on elephant treatment in an effort to curb potentially "abusive behavior towards [an] elephant." Cal. Penal Code § 596.5. But even there, owning and keeping an elephant in a zoo is not considered "abusive behavior." *Leider v. Lewis*, 394 P.3d 1055 (Cal. 2017) (denying injunctive relief even when a zoo treats an animal in ways that violate the state's penal code).

In recent years, Congress and state legislatures, including in New York, have continually demonstrated their ability to advance animal welfare protections while maintaining the ownership structure. For example, the establishment of trusts for domestic animals—which NRP relies upon to support its position—is an act of the New York State Legislature that allows owners to provide funds for the care of their animals should the pet survive the owner. *See* N.Y. Est. Powers & Trusts Law § 7-8.1.[14] The State Legislature has also enacted laws governing many aspects of owning livestock, companion animals, and research animals, among others, which it updates

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13 https://assets.speakcdn.com/assets/2332/aza_standards_for_elephant_management_and_care.pdf

14 All 50 states and the District of Columbia have a pet trust law. *See* Pet Trust Laws, ASPCA, at https://www.aspca.org/pet-care/pet-planning/pet-trust-laws.

regularly.[15] Throughout all of these reforms, legislatures have never conveyed legal "personhood" on animals. In fact, some legislators have even withdrawn their own animal rights bills after learning of the negative impact that expanding those rights would have on animals' welfare. *See* Julia C. Martinez, *Pet Bill Killed by House Sponsor; Move Outrages Senate Backer*, Denver Post, Feb. 16, 2003, at B1.

The Court should continue to respect New York's tripartite form of government, and allow the State Legislature to "recalibrate[e] rights and changing course when it deems such alteration appropriate." *Regina Metro. Co., LLC v. N.Y. State Div. of Housing & Cmty. Renewal*, 35 N.Y.3d 332, 348 (2020). Writs of habeas corpus are not the appropriate vehicle for upending the human-animal legal system.

CONCLUSION

For these reasons, the Court should uphold the ruling below and deny the writ of habeas corpus sought by NRP.

Respectfully submitted,

Scott A. Chesin
(Counsel of Record)

SHOOK HARDY & BACON L.L.P.
1325 Avenue of the Americas, 28th Floor
New York, NY 10019
Tel: (212) 779-6106
Fax: (929) 501-5455

[15] A listing of New York State laws pertaining to the protection and welfare of animals can be found at https://www.animallaw.info/statutes/us/new-york.

schesin@shb.com

Phil Goldberg (*pro hac vice* pending)
Christopher E. Appel (*pro hac vice* pending)
SHOOK HARDY & BACON L.L.P.
1800 K Street N.W., Suite 1000
Washington, D.C. 20006
Tel: (202) 783-8400
Fax: (202) 783-4211
pgoldberg@shb.com
cappel@shb.com

Attorneys for *Amici Curiae*

Dated: September 24, 2021

CERTIFICATE OF COMPLIACE

Pursuant to Rule 500.13(c)(1) of the Rules of Practice of the Court of Appeals in the State of New York, I hereby certify that, according to the word count of the word-processing system used to prepare this brief, the total word count for all printed text in the body of the brief, exclusive of the material omitted under Rule 500.13(c)(3), is 6378 words.

The brief was prepared with Microsoft Word 2016 using Times New Roman proportionally spaced typeface in 14-point font.

Dated: September 24, 2021

Scott A. Chesin

STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
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I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On October 13, 2021

deponent served the within: **Amici Curiae Brief of American Veterinary Medical Association, New York State Veterinary Medical Society, and American Association of Veterinary Medical Colleges in Support of Respondents**

upon:

See attached Service List

the address(es) designated by said attorney(s) for that purpose by depositing **2** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

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MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2022

T. Heath

Job# 307716

Service List:

Elizabeth S. Stein Esq.
Attorney for Appellant - Nonhuman Rights Project, Inc.
5 Dunhill Road
New Hyde Park NY 11040-2216
Phone: (516) 747-4726

David M. Lindsey Esq.
Chaffetz Lindsey LLP
Attorney for Amicus Curiae - John Berkman
1700 Broadway, 33rd Floor
New York NY 10019-5905
Phone: (212) 257-6966

Bezalel Stern Esq.
Kelley Drye & Warren LLP
Attorney for Amicus Curiae - Protect the Harvest
3050 K Street, NW, Suite 400
Washington DC 20007-5100
Phone: (202) 342-8422

Kenneth A. Manning Esq.
Phillips Lytle LLP
Attorney for Respondent - James J. Breheny
125 Main Street
Buffalo NY 14203-2887
Phone: (716) 847-7041

Jay Shooster Esq.
Richman Law & Policy
Attorney for Amicus Curiae - Matthew Liebman
1 Bridge Street, Suite 83
Irvington NY 10533

Reed Super Esq.
Super Law Group, LLC
Attorney for Amicus Curiae Martha C. Nussbaum
110 Wall Street
New York NY 10005
Phone: (212) 242-2355