

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - THIRD DEPARTMENT**

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus,

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

Petitioners-Appellants,

v.

PATRICK C. LAVERY, individually and as an officer of
Circle L Trailer Sales, Inc., DIANE LAVERY, and
CIRCLE L TRAILER SALES, INC.,

Respondents-Respondents.

**AFFIRMATION IN
OPPOSITION TO
PROPOSED
AMICUS CURIAE
PARTICIPATION IN
ORAL ARGUMENT**

Index No: 518336

Elizabeth Stein, Esq. and Steven M. Wise, Esq., affirm the following under
penalty of perjury:

1. I, Elizabeth Stein, am an attorney duly admitted to practice before the
courts of this State. I am the attorney of record for Petitioners-Appellants in the
above-captioned action and am fully familiar with the facts and circumstances
surrounding it.

2. I, Steven M. Wise, am an attorney duly admitted to practice before the
courts of the Commonwealth of Massachusetts. I am admitted *pro hac vice* in the
State of New York for the purpose of representing the Petitioners-Appellants in the

above-captioned action and am fully familiar with the facts and circumstances surrounding it.

3. This affirmation is submitted in response to proposed *amicus curiae* Bob Kohn's ("Kohn") letter addressed to this Court dated June 4, 2014, in which he requests permission to participate in oral argument in this appeal. A true and correct copy of the letter is attached herein as Exhibit 1.

4. Petitioners-Appellants oppose Kohn's participation in oral argument in this appeal on the ground that Kohn has made no showing that he would draw the Court's attention to law or arguments which might otherwise escape its consideration, or that his oral argument would be of special assistance to this Court.

5. This "Court does not hear oral arguments from amici curiae." *New York State Elec & Gas Corp v. City of Plattsburgh*, 122 N.Y.S.2d 390 (3d Dept. 1953). Neither do the other New York appellate courts, absent compelling circumstances not presented here. *See* 22 NYCRR 1000.13(k) (Fourth Department) ("A person granted permission to appear *amicus curiae* shall not be entitled to oral argument."); *State Farm Mut. Auto. Ins. Co. v. Mallela*, 4 N.Y.3d 775 (2005) (denied motion to participate in oral argument); *People v. Cahill*, 99 N.Y.2d 595 (2003) (same); *Jonathan L. v. New York State Dep't of Educ.*, 38 N.Y.2d 848 (1976) (same); *In re Lavette M.*, 34 N.Y.2d 804 (1974) (same); *In re Maurice C.*,

34 N.Y.2d 804 (1974) (same); *Lascaris v. Wyman*, 30 N.Y.2d 675 (1972) (same); *People v. Weston's Shoppers City, Inc.*, 30 N.Y.2d 557 (1972) (same); *People ex rel. Scarpetta v. Spence Chapin Adoption Serv.*, 28 N.Y.2d 658 (1971) (same); *Lakeland Water Dist v. Onondaga Cnty. Water Auth.*, 23 N.Y.2d 801 (1968) (same); *Great E. Liquor Corp. v. State Liquor Auth.*, 22 N.Y.2d 937 (1968) (same); *People v. Vetri*, 309 N.Y. 792 (1955) (same); *Gair v. Peck*, 167 N.Y.S.2d 1009 (3d Dept. 1957) (same); *Schaimberg v. Starbright Laundry*, 130 N.Y.S.2d 907 (3d Dept. 1954) (same); *Ultramares Corp. v. Touche*, 241 N.Y.S. 875 (1st Dept. 1930) (same); *Fred S. James & Co. v. Rossia Ins. Co. of Am.*, 218 N.Y.S. 751 (1st Dept. 1926) (same); *Dawes v. Silberman*, 56 N.Y.S.2d 902, 903 (N.Y. Mun. Ct. 1944) *aff'd sub nom.* 185 Misc. 338 (N.Y. Sup. Ct. 1944) (same). *See also* Gary Muldoon, *Handling a Criminal Case in New York, Chapter 24. Appellate Practice* § 24:45 (2013) (“An amicus is normally not entitled to participate in oral argument.”).

6. Proposed *amicus curiae* in this case has given no reason why the Court should stray from its general practice of limiting participation to the filing of an amicus brief and not allowing oral argument. It is true that Respondents have decided not to submit a brief. But Kohn’s proposed *amicus curiae* brief fails to address any of the complex legal issues associated with the appeal. It is legally simple, entirely self-explanatory and fails to address the complex arguments

Petitioners-Appellants made in their opening brief. Nor has Kohn demonstrated any special expertise or experience with the relevant legal or factual issues. Under these circumstances, Kohn's participation in oral argument would merely distract this Court from the relevant legal issues.

WHEREFORE, Petitioners-Appellants respectfully request that this Court deny proposed *amicus curiae's* motion to participate in oral argument in the above-captioned matter.

Dated: June 23, 2014

Respectfully submitted,

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