

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORLEANS

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,

v.

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.

**AFFIDAVIT OF JAMES J.
BREHENY IN
OPPOSITION TO
ORDER TO SHOW CAUSE**

Index No.:

STATE OF NEW YORK)
) SS.:
COUNTY OF BRONX)

James J. Breheny, being duly sworn, deposes and says:

1. I was appointed Director of the Bronx Zoo in 2005, and Executive Vice President and General Director, Zoos and Aquarium, and Jonathan Little Cohen Director, Bronx Zoo in 2011. I earned a B.S. in Biology from Manhattan College and an M.S. in Biology from Fordham University. I have been a staff member of Respondent Wildlife Conservation Society for 37 years, and taught as an adjunct professor of Biology at Manhattan College for 17 years. As such, I am fully familiar with the facts and circumstances of this matter.

2. Respondents submit this affidavit in opposition to Petitioner the Nonhuman Rights Project, Inc.'s ("NRP") petition for a writ of habeas corpus by order to show cause (attached as **Exhibit A**).

A. The Wildlife Conservation Society and Bronx Zoo

3. Respondent the Wildlife Conservation Society is a not-for-profit corporation whose mission statement is to save wildlife and wild places worldwide through science, conservation action, education, and inspiring people to value nature.

4. Opened in 1899, the Bronx Zoo, a Wildlife Conservation Society park, cares for thousands of endangered or threatened animals, and provides experiences to visitors that may spark a lifelong passion to protect animals and their natural habitats.

B. The Nonhuman Rights Project, Inc. ("NRP")

5. NRP "is a not-for-profit corporation organized pursuant to the laws of the State of Massachusetts" and presents itself as

the only civil rights organization in the United States dedicated to changing 'the common law status of at least some nonhuman animals from mere 'things,' which lack the capacity to possess any legal rights, to 'persons,' who possess such fundamental rights as bodily integrity and bodily liberty.

Ex. A ¶ 37.

6. Some of NRP's stated goals are "[t]o develop . . . issue-oriented grassroots and legislative campaigns to promote recognition of nonhuman animals as beings . . . with their own inherent interests in freedom from captivity" and "to build a broad-based coalition of organizations and individuals to secure legally recognized fundamental rights for nonhuman animals." *See* <https://www.nonhumanrights.org/who-we-are/>.

7. NRP vows on its website to lead “the fight to secure actual legal rights for nonhuman animals through a state-by-state, country-by-country, long-term litigation campaign.” See <https://www.nonhumanrights.org/litigation/>.

C. Petitioner openly admits to forum shopping

8. On October 2, 2018, NRP announced via its blog that it had filed a petition in Orleans County Supreme Court on behalf of Happy, a 47-year old Asian elephant at the Bronx Zoo. See <https://www.nonhumanrights.org/blog/lawsuit-happy-bronx-zoo/>.

9. NRP states that although it “can file suit in any county [it] chose to file in Orleans County (part of the Fourth Department) because the First Department, which oversees the county where the Bronx Zoo is located, ‘has demonstrated that it is willing to ignore powerful legal arguments and deprive an autonomous being such as Happy of any and all of her rights, just because she is not a human.’” *Id.*

10. NRP’s decision to commence this matter in Orleans County is, by their own admission, based upon a notion that the courts in the Fourth Department would be more likely to grant the relief sought by NRP than those in the First Department.

D. NRP’s order to show cause and petition should be denied

11. As provided in the accompanying memorandum of law, there is no basis in New York law for the relief NRP seeks.

12. NRP also does not and cannot allege that Happy’s current living conditions are in any way unlawful or below accepted standards of care.

13. NRP’s petition for writ of habeas corpus therefore should be denied.

14. Moreover, the events addressed in NRP's petition, namely the current living conditions of Happy, occurred in Bronx County.

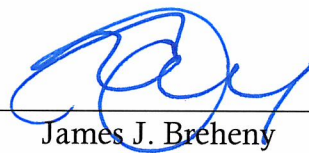
15. Respondents have no operations located in Orleans County.

16. Happy also is currently located in Bronx County, and it would be exceedingly difficult, expensive and potentially dangerous to transport Happy to Orleans County, should the Court require Happy's attendance at a hearing.

17. Happy is 47 years old and an older elephant. The trip from Bronx Zoo to Orleans County, which spans approximately 385 miles, would be highly stressful and detrimental to Happy's well-being.

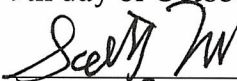
18. The trip from Happy's current location to the suggested Performing Animal Welfare Society's sanctuary near Sacramento, California could be even more harmful to Happy, as experience has shown us that she doesn't transport well.

19. In light of the foregoing, and because NRP seems to have chosen Orleans County purely for perceived litigation advantage, Respondents respectfully request that the Court transfer venue to Bronx County if NRP's order to show cause is granted.



James J. Breheny

Sworn to before me this
9th day of October, 2018.



Notary Public

Doc #01-3153589

SCOTT F. WIGHT
Notary Public, State of New York
No. 01WI6242543
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires 6 JUNE 20 19