

STATE OF NEW YORK
SUPREME COURT 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,
-against-

JAMES J. BREHENY, in his official capacity as the
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.

Index No.: 18-45164

**OPPOSITION TO
MOTION TO FILE
AMICUS BRIEF**

**Opposition of the Petitioner, The Nonhuman Rights Project, Inc. to the Motion of the
Alliance of Marine Parks & Aquariums, Protect the Harvest, and the Zoological
Association of America to file an Amicus Brief**

The Nonhuman Rights Project's primary objections may be found in a Supreme Court's
complaint about improper amicus briefs:

The contents of too many *amicus* submissions have gone far past their purpose. For example, as an *amicus* proper function is to advise the court of the law and the implication of a decision of the Court on the matter before it on other matters, the inclusion of factual material is almost always improper. Factual material submitted to the court by an *amicus* should not be subject to less scrutiny and contravention by opposing parties than factual material submitted by a party. Unless the Court makes the *amicus* a party, such is impossible when factual material is submitted by an *amicus*.

Price v. New York City Board of Education, 837 N.Y.S. 2d 507, 516 (New York County Supreme Court 2007).

The proposed *amici* do not claim to have any interest in New York State. Nor do they claim to have any interest in elephants, who are the subject of this case at bar. This is likely what

leads them into their lengthy “slippery slope” discussion of cows, pigs, hogs, sharks, rats, bees, penguins, cats, chickens, monkeys, lion, tigers, and other species of animals that have nothing whatsoever to do with the case at bar, while saying nothing about elephants. This is precisely the argument that court in *Article 70 Of CPLR for a Writ of Habeas Corpus, the Nonhuman Rights Project, Inc. on Behalf of Hercules and Leo v. Stanley*, 49 Misc. 2d 746, 772 n.2 (Sup. Ct. New York County 2015) rejected (“The floodgates argument is not a cogent reason for denying relief. (See *Enright by Enright v. Eli Lilly & Co.*, 77 N.Y.2d 377, 568 N.Y.S.2d 550, 570 N.E.2d 198 [1991] [“floodgates of litigation” alarm unpersuasive in view of Court’s “repeated admonitions that it is not a ground for denying a cause of action that there will be a proliferation of claims’ and if a cognizable wrong has been committed that there must be a remedy, whatever the burden of the courts.”]), quoting *Tobin v. Grossman*, 24 N.Y.2d 609, 615, 301 N.Y.S.2d 554, 249 N.E.2d 419 [1969]).”).

Worse, the proposed *amicus* brief has no potential for assisting the court in the case at bar, while having the strong potential to insert a large number of irrelevancies into the litigation, as it is replete with false facts that are vital to the alleged argument of the proposed *amici*. For example:

1. On page 3, the proposed *amici* make the unsupported and absurd claim that the Nonhuman Rights Project is using the case at bar “to provide habeas rights to *virtually all* nonhuman animals (emphasis in the original). The NhRP is seeking habeas corpus relief for a single autonomous, extraordinarily cognitively complex elephant.
2. On page 3, the proposed *amici* make the unsupported and absurd claim that the NhRP is trying “to provide human rights to a wide swath of animals.” As noted,

the NhRP is seeking habeas corpus relief for a single autonomous, extraordinarily cognitively complex elephant.

3. On page 3, the proposed *amici* make the absurd claim that the NhRP and its founder are “on record that they seek human rights for, among other animals ... dogs and honeybees.” The alleged source for this false claim, of course, does not support it, as it is false.
4. On page 4, the proposed *amici* make a critical false statement. They claim that the NhRP is seeking legal rights for “intelligent nonhuman animals.” The source for the citation is actually Judge Fahey’s concurring opinion. 31 N.Y. 3d. at 1059. In other words those are Judge Fahey’s words, not the words of the NhRP. The NhRP does argue that such *autonomous* beings as elephants should have the right to bodily liberty protected by the common law habeas corpus. But the word “intelligent” or “intelligence” do not appear at all in either the Petition or supporting Memorandum. That is because “intelligence” is irrelevant to the NhRP’s claim.

What is relevant is the “autonomy” of Happy the elephant. Accordingly, the words “autonomous” or “autonomy” appear 29 times in the NhRP’s *Petition* and 38 times in its supporting *Memorandum*. The words “intelligent” or “intelligence” appear three times in Judge Fahey’s opinion and the words “autonomy” or “autonomous” also appear three times.

The reason for this falsehood becomes clear in the rest of the *amicus* brief, as the proposed *amici* begins citing to a Noah’s Ark of such “intelligent” nonhuman animals as cows, pigs, hogs, sharks, rats, bees, penguins, cats, chickens, monkeys, lion, tigers, and other species of

animals who have nothing whatsoever to do with the elephant involved in the case at bar or the work of the NhRP, having habeas corpus rights.

The only discussion of the law in the proposed *amicus* brief consists entirely of a single, short paragraph in the main text on page 2 and an accompanying footnote. Otherwise it literally does nothing more than repeat the same arguments and citations already made—much more extensively—in the two memoranda filed by the Respondents (*Zoo Memorandum 1* makes the “controlling” argument on page 4; *Zoo Memorandum 2* one makes the “animals are property” argument on page 11). This is the opposite of advising “the court of the law” and demonstrates the proposed amici’s utter inability to “identify law or arguments that might otherwise escape the court’s consideration or would otherwise be of assistance to the court.” *Anschutz Exploration Corp v. Town of Dryden*, 35 Misc.4d 450, 454 (Sup. Ct 2012).

As the major products of this proposed *amicus* brief are false facts and improper “slippery slope” arguments, and as no new legal arguments are made, and there is no chance it could be of assistance to this Court, though it would inject numerous irrelevancies into the case, the NhRP therefore respectfully objects to the *amici*’s motion being granted.

Dated: December 11, 2018

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