

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.

**RESPONSE TO *AMICUS CURIAE* BRIEF OF
NATIONAL ASSOCIATION FOR BIOMEDICAL RESEARCH**

ELIZABETH STEIN, ESQ.
NONHUMAN RIGHTS PROJECT, INC.
5 Dunhill Road
New Hyde Park, New York 11040
Tel.: (917) 846-5451
Fax: (516) 294-1094
lizsteinlaw@gmail.com

— and —

STEVEN M. WISE, ESQ.
(*Of the Bar of the State of
Massachusetts*)
5195 NW 112th Terrace
Coral Springs, Florida 33076
Tel.: (954) 648-9864
wiseboston@aol.com
Attorneys for Petitioner-Appellant

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 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-Respondents.

Pursuant to Section 500.1(f) of the Rules of Practice of the New York Court
of Appeals, counsel for Petitioner-Appellant, Nonhuman Rights Project, Inc.
("NhRP"), certifies that the NhRP has no corporate parents, subsidiaries or
affiliates.

Dated: December 3, 2021

Elizabeth Stein, Esq.
5 Dunhill Road
New Hyde Park, New York 11040
(917) 846-5451
lizsteinlaw@gmail.com
Attorney for Petitioner-Appellant

**CORPORATE
DISCLOSURE
STATEMENT
PURSUANT TO
RULE 500.1(f)**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
A. This Court has the power to recognize Happy’s common law right to bodily liberty protected by habeas corpus	2
B. Recognizing Happy’s common law right to bodily liberty protected by habeas corpus accords with common law evolution and would not adversely impact medical research	9
C. The trade group’s other arguments for denying Happy habeas corpus relief are likewise erroneous	15
Conclusion	18

TABLE OF AUTHORITIES

Cases:	Page(s)
<i>Anne Arundel County v. Reeves</i> , 252 A.3d 921 (2021)	5, 9
<i>Barker v. Parnossa, Inc.</i> , 39 N.Y.2d 926 (1976)	11
<i>Battalla v. State of New York</i> , 10 N.Y.2d 237 (1961)	14, 15
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	15, 16
<i>Bovsun v. Sanperi</i> , 61 N.Y.2d 219 (1984)	12
<i>Byrn v. New York City Health & Hosps. Corp.</i> , 31 N.Y.2d 194 (1972)	6
<i>Falzone v. Busch</i> , 45 N.J. 559 (1965)	15
<i>Flo & Eddie, Inc. v. Sirius XM Radio, Inc.</i> , 28 N.Y.3d 583 (2016)	9
<i>Gallagher v. St. Raymond's R. C. Church</i> , 21 N.Y.2d 554 (1968)	10, 11
<i>Greene v. Esplanade Venture Partnership</i> , 36 N.Y.3d 513 (2021)	12, 15
<i>In re Belt</i> , 2 Edm. Sel. Cas. 93 (N.Y. Sup. Ct. 1848)	4
<i>In re Kirk</i> , 1 Edm. Sel. Cas. 315 (N.Y. Sup. Ct. 1846)	4

<i>Lemmon v. People</i> , 20 N.Y. 562 (1860)	3, 4, 16
<i>Matter of Johannesen v. New York City Dept. of Hous. Preserv. & Dev.</i> , 84 N.Y.2d 129 (1994)	13
<i>Matter of Nonhuman Rights Project, Inc. v. ex rel. Hercules and Leo v. Stanley</i> , 49 Misc.3d 746 (Sup. Ct. 2015)	3, 15, 17
<i>Matter of Nonhuman Rights Project, Inc. v. Lavery</i> , 31 N.Y.3d 1054 (2018)	4, 10
<i>Millington v. Southeastern El. Co.</i> , 22 N.Y.2d 498 (1968)	10
<i>Norcon Power Partners v. Niagara Mohawk Power Corp.</i> , 92 N.Y.2d 458 (1998)	13
<i>Oatfield v. Waring</i> , 14 Johns. 188 (Sup. Ct. 1817)	16
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	18
<i>People ex. rel Caldwell v. Kelly</i> , 35 Barb. 444 (Sup. Ct. 1862)	16
<i>People ex rel. DeLia v. Munsey</i> , 26 N.Y.3d 124 (2015)	2
<i>People ex rel. Keitt v. McMann</i> , 18 N.Y.2d 257 (1966)	2, 3
<i>People ex rel. Nonhuman Rights Project, Inc. v. Lavery</i> , 124 A.D.3d 148 (3d Dept. 2014)	3
<i>People v. Graves</i> , 163 A.D.3d 16 (4th Dept. 2018)	8

<i>People v. Molineux</i> , 6 Bedell 264 (1901)	11
<i>Robb v. Pennsylvania R. Co.</i> , 8 Storey 454 (1965)	15
<i>Rooney v. Tyson</i> , 91 N.Y.2d 685 (1998)	13
<i>Rozell v. Rozell</i> , 281 N.Y. 106 (1939)	2
<i>Schultz v. Barberton Glass Co.</i> , 4 Ohio St.3d 131 (1983)	15
<i>Sinn v. Burd</i> , 486 Pa. 146 (1979)	15
<i>Somerset v. Stewart</i> , 1 Lofft. 1 (K.B. 1772)	2, 3, 4, 14, 16
<i>The Nonhuman Rights Project v. Breheny</i> , 2020 WL 1670735 (N.Y. Sup. Ct. 2020)	5, 12
<i>Thyroff v. Nationwide Mut. Ins. Co.</i> , 8 N.Y.3d 283 (2007)	11, 12
<i>Tobin v. Grossman</i> , 24 N.Y.2d 609 (1969)	14
<i>Woods v. Lancet</i> , 303 N.Y. 349 (1951)	11
Statutes & Other Authorities:	
CPLR 7002(a)	2
CPLR 7010(a)	18
EPTL § 1-2.18	18

EPTL § 7-8.1	17
N.Y. Const. art. 1, § 4	16
N.Y. Const. art. I, § 14	3
U.S. Const. art. I, § 9, cl. 2	16
1 ENGLISH PRIVATE LAW § 3.24 (Peter Birks ed. 2000)	7
Agustin Fuentes, <i>The Humanity of Animals and the Animality of Humans: A View from Biological Anthropology Inspired by J.M. Coetzee’s “Elizabeth Costello”</i> , 108 AM. ANTHROPOLOGIST 124 (2006)	9
Barbara B. Smuts, <i>Reflections</i> , in THE LIVES OF ANIMALS (1999)	9
BLACK’S LAW DICTIONARY (11th ed. 2019)	6, 18
Bryant Smith, <i>Legal Personality</i> , 37 YALE L.J. 283 (1928)	6
Charles Taliaferro, <i>Animals, Brains, and Spirits</i> , 12 FAITH AND PHIL.: J. OF THE SOC’Y OF CHRISTIAN PHILOSOPHERS 580 (1995)	8, 9
David Grimm, <i>How many mice and rats are used in U.S. labs? Controversial study says more than 100 million</i> , SCIENCE (Jan. 12, 2021), https://bit.ly/3d5Y9FU	1
David Grimm, <i>USDA now only partially inspects some lab animal facilities, internal documents reveal</i> , SCIENCE (May 5, 2021), https://bit.ly/31MV8rP	14
Elisa Aaltola, <i>Personhood and Animals</i> , 30 ENV’T ETHICS 175 (2008)	9
IV ROSCOE POUND JURISPRUDENCE (1959)	6
J.-R. Trahan, <i>The Distinction Between Persons and Things: An Historical Perspective</i> , 1 J. CIVIL L. STUD. 9 (2008)	7
JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW (1909)	8
JOHN SALMOND, JURISPRUDENCE (10th ed. 1947)	6

Kristin Andrews, <i>The Psychological Concept of ‘Person’</i> . <i>Commentary on Rowlands on Animal Personhood</i> , 147 ANIMAL SENTIENCE 1 (2016)	9
Marin K. Levy, <i>Judging the Flood of Litigation</i> , 80 U. CHI. L. REV. 1007 (2013)	15
MARK ROWLANDS, CAN ANIMALS BE PERSONS? (2019)	8
Paola Cavalieri, <i>Whales as Persons</i> , in THE ANIMAL ETHICS READER (3d. 2017)	8
Paul Finkelman, <i>Let Justice Be Done, Though the Heavens May Fall: The Law of Freedom</i> , CHI.-KENT L. REV., Vol. 70, No. 2 (1994)	14
PETER SINGER, PRACTICAL ETHICS (3rd ed. 2011)	9
Rachel Fobar, <i>USDA accused of ignoring animal welfare violations in favor of business interests</i> , NAT. GEO. (Oct. 13, 2020), https://on.natgeo.com/3o7bVx7	14
Rachel Fobar, <i>Roadside Zoo elephants suffered for years before dying, new records reveal</i> , NAT. GEO. (July 13, 2021), https://on.natgeo.com/3qjwKYT	14
Richard Tur, <i>The “Person” in Law</i> , in PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY (Arthur Peacocke & Grant Gillett eds. 1987)	6
<i>Secret Policy Uncovered Under the Freedom of Information Act Shows USDA Does Not Inspect Research Labs as Required by the Animal Welfare Act</i> , Harvard Law School Animal Law & Policy Program (May 5, 2021), https://bit.ly/3D459OR	13, 14
Steven M. Wise, <i>Dismantling the Barriers to Legal Rights for Nonhuman Animals</i> , 7 ANIMAL L. 9 (2001)	9
Thomas I. White, IN DEFENSE OF DOLPHINS: THE NEW MORAL FRONTIER (2007)	8
Vincent Alexander, <i>Practice Commentaries</i> , McKinney’s CPLR 7001	3
<i>Your Voice in Government</i> , NABR (2020), https://www.nabr.org/about	1

Amicus Curiae, a 501(c)(6) trade group called the National Association for Biomedical Research (“trade group”), advocates for the general use of nonhuman animals in medical research with no oversight. The trade group applauds itself as being “successful in obtaining statutory exemptions and amendments in the Animal Welfare Act for coverage of rats, mice and birds used in research.”¹ As mice and rats *alone* “represent more than 99% of all lab animals,” there is no oversight for virtually all the nonhuman animals used in medical research.² The remaining less than 1% of nonhuman animals used in medical research do not include elephants.

This habeas corpus case is about just one nonhuman animal, Happy, a long-imprisoned elephant entitled to her freedom. However, trying to mislead this Court into believing that ruling in Happy’s favor would somehow harm medical research, the trade group falsely suggests no less than 30 times that this case is about nonhuman “animals” in general.

The trade group advances two main arguments for denying Happy habeas corpus relief. First, this Court lacks the power to rule in Happy’s favor because “person” cannot refer to a nonhuman animal. Second, this Court should not rule in Happy’s favor because that would conflict with common law evolution and have

¹ *Your Voice in Government*, NABR (2020), <https://www.nabr.org/about>.

² David Grimm, *How many mice and rats are used in U.S. labs? Controversial study says more than 100 million*, SCIENCE (Jan. 12, 2021), <https://bit.ly/3d5Y9FU>.

severe consequences for medical research. These arguments, as well as the other arguments discussed below, are erroneous.

A. This Court has the power to recognize Happy’s common law right to bodily liberty protected by habeas corpus

The trade group cites no authority for its claim that this Court lacks the “power” to confer “legal personhood on another species.” Amicus Br. 3. Instead, it argues that the “plain meaning and historical province” of CPLR 7002(a), as well as “any reasonable understanding” of the term “person,” precludes all nonhuman animals. *Id.* at 8. This is erroneous for the following reasons.

First, whether Happy is a “person” for purposes of habeas corpus is a common law question that falls squarely within this Court’s purview.³ The trade group concedes both that “person” is not defined in CPLR article 70, *id.* at 5, which merely “governs the procedure of the common-law writ of habeas corpus,” *People ex rel. DeLia v. Munsey*, 26 N.Y.3d 124, 130 (2015), and that “the judiciary has considerable discretion . . . to determine how [the habeas corpus statute] applies in new contexts given the writ’s ‘great flexibility and vague scope.’”⁴ Amicus Br. 8 (quoting *People ex rel. Keitt v. McMann*, 18 N.Y.2d 257, 263 (1966)).

³ “The genius of the common law lies in its flexibility and . . . in its ability to enunciate rights and to provide remedies for wrongs where previously none had been declared.” *Rozell v. Rozell*, 281 N.Y. 106, 112 (1939).

⁴ Contrary to the trade group’s assertion, the recognition of Happy’s personhood for purposes of habeas corpus accords, rather than conflicts, with “historical province.” Amicus Br. 8. In the famous case of *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772) [COMP-160], an enslaved Black human

The Third Department correctly recognized that “[t]he statute does not purport to define the term ‘person,’ and for good reason. The ‘Legislature did not intend to change the instances in which the writ was available,’ which has been determined by ‘the slow process of decisional accretion.’” *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150 (3d Dept. 2014) (“*Lavery I*”) (quoting *McMann*, 18 N.Y.2d 263).⁵ “Thus, we must look to the common law surrounding the historic writ of habeas corpus to ascertain the breadth of the writ’s reach,”⁶ *id.*, and apply the long-established principles and standards for updating the common law (wisdom, justice, right, ethics, fairness, policy, shifting societal norms, and the surging reality of changed conditions), as well as the fundamental common law principles of liberty and equality.⁷ NhRP’s Br. 21-43.

was freed pursuant to common law habeas corpus. *Somerset* has always been part of New York’s common law. See *Lemmon v. People*, 20 N.Y. 562, 604-05 (1860); N.Y. Const. art. I, § 14.

⁵ The Third Department also correctly recognized that “[t]he lack of precedent for treating animals as persons for habeas corpus purposes does not . . . end the inquiry, as the writ has over time gained increasing use given its ‘great flexibility and vague scope.’” *Lavery I*, 124 A.D.3d at 150-51 (quoting *McMann*, 18 N.Y.2d at 263).

⁶ See Vincent Alexander, *Practice Commentaries*, McKinney’s CPLR 7001 (“The drafters of the CPLR made no attempt to specify the circumstances in which habeas corpus is a proper remedy. This was viewed as a matter of substantive law.”).

⁷ The trade group erroneously claims that “neither the historical record nor the common law offers even a scintilla of support for the notion that a party may invoke the writ of habeas corpus on behalf of an animal.” Amicus Br. 7. But the NhRP successfully “invoked the writ of habeas corpus on behalf of an animal” when it secured a habeas corpus order to show cause in the case at bar (A-323-25), and previously on behalf of two chimpanzees. *Matter of Nonhuman Rights Project, Inc. v. ex rel. Hercules and Leo v. Stanley*, 49 Misc.3d 746, 749 (Sup. Ct. 2015) (“Given the important questions raised here, I signed petitioner’s order to show cause”). Similarly, parties have used the Great Writ to secure the freedom of humans previously denied their right to bodily liberty. *E.g.*,

Judge Eugene M. Fahey recognized that whether “an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do” can invoke the protections of habeas corpus is “a deep dilemma of ethics and policy that demands our attention.” *Matter of Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054, 1058 (2018) (Fahey, J., concurring). On whether a chimpanzee is entitled to habeas corpus relief, Judge Fahey rejected a definitional approach like the one asserted by the trade group:

The better approach in my view is to ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. . . . [T]he answer to that question will depend on our assessment of the intrinsic nature of chimpanzees as a species.

Id. at 1057. The same is true in Happy’s case.

Thus, the question is *not* whether Happy fits the definition of a “person” for purposes of habeas corpus (which she does), but whether she has the common law right to bodily liberty protected by habeas corpus, which depends on the intrinsic nature of elephants as a species. Based on the NhRP’s six uncontroverted “expert scientific affidavits from five of the world’s most renowned experts on the cognitive abilities of elephants,” the Trial Court found that “elephants are autonomous beings

Lemmon, 20 N.Y. 562 (seven slaves); *In re Belt*, 2 Edm. Sel. Cas. 93 (N.Y. Sup. Ct. 1848) (slave); *In re Kirk*, 1 Edm. Sel. Cas. 315 (N.Y. Sup. Ct. 1846) (slave imprisoned on brig); *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772) (slave) (approved in *Lemmon*, 20 N.Y. at 604–06, 623).

possessed of extraordinarily cognitively complex minds.”⁸ *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 *3, *6 (N.Y. Sup. Ct. 2020) (A-10, A-16). “Happy is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings. . . . She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” (A-22). Recognizing Happy’s “plight” at the Bronx Zoo, the Trial Court found the NhRP’s arguments “extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit . . . to an elephant sanctuary on a 2300 acre lot.” *Id.*

Second, the trade group asserts that Happy “is not a ‘person’ under any reasonable understanding of that term,” Amicus Br. 8, because “no ordinary English speaker” would use “person” to refer to a nonhuman animal. *Id.* at 5. But the trade group cites no evidence of any kind for this assertion, which is also irrelevant because “person” is a legal term of art, having nothing to do with “common parlance.”⁹ *Id.* “What is a legal person is for the law . . . to say, which simply means

⁸ The trade group recognizes the importance of biologists in resolving a habeas corpus claim on behalf of a nonhuman animal. Amicus Br. 10. So does the NhRP, which “placed before the Court five deeply educated, independent, expert opinions, all firmly grounded in decades of education, observation, and experience, by some of the most prominent elephant scientists in the world.” (A-16). The Trial Court’s lack of “zoological expertise” is irrelevant. Amicus Br. 12.

⁹ Ordinary English speakers would not use the term “person” to refer to a ship. *See, e.g., Anne Arundel County v. Reeves*, 252 A.3d 921, 944 (2021) (Hotten, J., dissenting) (“The average Marylander may be more surprised to hear that the law has recognized a *boat*, or more precisely, a vessel, as a legal person. . . . Even though vessels constitute inanimate amalgamations of mostly

that upon according legal personality to a thing the law affords it the rights and privileges of a legal person.” *Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201 (1972).

The trade group’s statement that “[a]ll three definitions of ‘person’ in Black’s Law Dictionary . . . exclude other species” is a lie by omission. Amicus Br. 6. It has long been understood that a “person is any being whom the law regards as capable of rights or duties,” and “[a]ny being that is so capable is a person, whether a human being or not.” *Person*, BLACK’S LAW DICTIONARY (11th ed. 2019) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)).¹⁰ *See also* IV ROSCOE POUND, JURISPRUDENCE 197 (1959) (“The significant fortune of legal personality is the capacity for rights.”); Richard Tur, *The “Person” in Law*, in PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY, 121-22 (Arthur Peacocke & Grant Gillett eds. 1987) (“[L]egal personality can be given to just about anything. . . . It is an empty slot that can be filled by anything that can have rights or duties.”); Bryant Smith, *Legal Personality*, 37 YALE L.J. 283, 283 (1928) (“To confer legal rights or to impose legal duties . . . is to confer legal personality.”); NhRP’s Br. 43-44

steel, aluminum, fiberglass and timber, the law endows the vessel with a legal personality (usually gendered as female) and empowers ‘her’ recovery for tort damages.”).

¹⁰ Illustrative quotations from leading scholars such as John Salmond are included in Black’s to “provide the seminal remark—the *locus classicus*—for an understanding of the term.” PREFACE TO THE ELEVENTH EDITION, BLACK’S LAW DICTIONARY xiv (11th ed. 2019).

(discussing legal personhood).¹¹ Accordingly, once this Court recognizes Happy’s common law right to bodily liberty, she is a “person” for purposes of habeas corpus.

Further, contrary to the trade group’s assertion that “[n]o ordinary English speaker would use the word [sic] ‘person’ to refer to an elephant,” Amicus Br. 5, sixty-one distinguished, English-speaking scholars, experts, and philosophers have submitted amicus briefs to this Court arguing that the concept of personhood applies to Happy. They are constitutional law scholars Laurence H. Tribe, Sherry F. Colb, and Michael C. Dorf¹²; habeas corpus experts Justin Marceau, Samuel Wiseman, Hollis Whitson, Gail Johnson, Jane Byrialsen, and David Fisher¹³; retired Justice of the Constitutional Court of South Africa, Edwin Cameron¹⁴; philosopher Martha

¹¹ See also 1 ENGLISH PRIVATE LAW § 3.24, 146 (Peter Birks ed. 2000) (“A human being or entity . . . capable of enforcing a particular right, or of owing a particular duty, can properly be described as a person *with that particular capacity*,” though not necessarily “a person *with an unlimited set of capacities*”); J.-R. Trahan, *The Distinction Between Persons and Things: An Historical Perspective*, 1 J. CIVIL L. STUD. 9, 14 (2008) (“First, the modern theory (re-) defines ‘person’ as the ‘*subject* of rights and duties,’ in the sense of that which is ‘capable’ of being ‘subjected’ to duties and/or of being ‘invested’ with rights.”).

¹² Br. of *Amici Curiae* Laurence H. Tribe, Sherry F. Colb, and Michael Dorf at 24-25, <https://bit.ly/3mOxJON> (“This Court can likewise act in the ‘finest common-law tradition’ by revising current precedent and ordering that Happy is a legal person entitled to the protections of habeas corpus.”).

¹³ Br. of *Amici Curiae* Habeas Corpus Experts at 7, <https://bit.ly/3q4RsLN> (“Happy—as an autonomous and self-determining being, innocent and unjustly confined—should be recognized as a legal person who is entitled to the common law right to bodily liberty protected by habeas corpus, as historically used by persons imprisoned under similar unjust circumstances.”).

¹⁴ Br. of *Amicus Curiae* Edwin Cameron at 1, <https://bit.ly/3BFkmEE> (arguing that “legal personhood extends to Happy, thereby rendering her imprisonment unlawful”).

Nussbaum¹⁵; a group of fourteen philosophers¹⁶; and a group of thirty-six legal academics, barristers, and solicitors from the United Kingdom.¹⁷

In addition, the Fourth Department recognized “it is *common knowledge* that personhood can and sometimes does attach to nonhuman entities like . . . animals.” *People v. Graves*, 163 A.D.3d 16, 21 (4th Dept. 2018) (citations omitted) (emphasis added). Over a hundred years ago, Professor John Chipman Gray of Harvard Law School stated the obvious: “animals may conceivably be legal persons. . . . [L]egal persons because possessing legal rights.” JOHN CHIPMAN GRAY, *THE NATURE AND SOURCES OF THE LAW* 42 (1909). And numerous English-speaking scholars, lawyers, and philosophers have argued that at least certain nonhuman animals are “persons.”¹⁸

¹⁵ Br. of *Amicus Curiae* Professor Martha C. Nussbaum at 18, <https://bit.ly/3bAQTRC> (“Happy’s legal personhood based on the capabilities approach shows unequivocally that Zoo captivity does not, and cannot, afford Happy the life she deserves.”).

¹⁶ Br. of *Amici Curiae* Philosophers at 2, <https://bit.ly/3GO8GmH> (“Happy is a nonhuman person who should be released from her current confinement and transferred to an appropriate elephant sanctuary”). The trade group recognizes the importance of philosophers in resolving a habeas corpus claim on behalf of a nonhuman animal. Amicus Br. 10.

¹⁷ Br. of *Amici Curiae* UK-Based Legal Academics at 29-30, <https://bit.ly/3q3LtXH> (arguing for Happy’s personhood for purposes of habeas corpus).

¹⁸ See, e.g., THOMAS I. WHITE, *IN DEFENSE OF DOLPHINS: THE NEW MORAL FRONTIER* 184 (2007) (“[A]ccording to even a traditional definition of personhood and a conventional set of criteria for the various traits of a person, the scientific research that’s currently available about dolphins suggests a strong case for recognizing them as nonhuman persons.”); Paola Cavalieri, *Whales as Persons*, in *THE ANIMAL ETHICS READER* 235-40 (3d. 2017) (arguing that whales are persons with the right to life); MARK ROWLANDS, *CAN ANIMALS BE PERSONS?* 197 (2019) (“The central contention of this book has been that . . . the claim that many animals are persons is not implausible at all. More than that: I think it is probably true.”); Charles Taliaferro, *Animals, Brains, and Spirits*, 12 FAITH AND PHIL.: J. OF THE SOC’Y OF CHRISTIAN PHILOSOPHERS 580 n.29 (1995) (“A strong

B. Recognizing Happy’s common law right to bodily liberty protected by habeas corpus accords with common law evolution and would not adversely impact medical research

The trade group erroneously asserts that ruling in Happy’s favor would be contrary to this Court’s statement that “[t]he common law . . . evolves slowly and incrementally, eschewing sudden or sweeping changes.” Amicus Br. 8 (quoting *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 28 N.Y.3d 583, 594 (2016)). However, this Court’s recognition of Happy’s common law right to bodily liberty protected by habeas corpus would exemplify a slow, incremental evolution of the common law, one compelled by our present-day specific scientific understanding of elephant autonomy and cognition which has taken more than four decades to achieve.¹⁹

case can be made for recognizing some nonhuman animals as persons.”); Barbara B. Smuts, *Reflections*, in *THE LIVES OF ANIMALS* 108 (1999) (“I have met the ‘other’ in this way, not once or a few times, but over and over during years spent in the company of ‘persons’ like you and me, who happen to be nonhuman.”); Steven M. Wise, *Dismantling the Barriers to Legal Rights for Nonhuman Animals*, 7 *ANIMAL L.* 9, 15 (2001) (“That other pillar of Western justice, equality, also demands the legal personhood of chimpanzees and bonobos.”); PETER SINGER, *PRACTICAL ETHICS* 100 (3rd ed. 2011) (“I think we should conclude . . . that some nonhuman animals are persons, as we have defined the term.”); Elisa Aaltola, *Personhood and Animals*, 30 *ENV’T ETHICS* 175, 192 (2008) (arguing that “animals, who are capable of first-order categorizations and phenomenal consciousness, could be classified as persons”); Agustin Fuentes, *The Humanity of Animals and the Animality of Humans: A View from Biological Anthropology Inspired by J.M. Coetzee’s “Elizabeth Costello”*, 108 *AM. ANTHROPOLOGIST* 124, 125 (2006) (“Our sympathetic imagination . . . allow[s] us to extend the notion of ‘personhood’ beyond our species and to use this expanded conception to extend rights to animals”); Kristin Andrews, *The Psychological Concept of ‘Person’*, *Commentary on Rowlands on Animal Personhood*, 147 *ANIMAL SENTIENCE* 1, 4 (2016) (“Considering animals as persons forces us to confront the possibility that we cannot treat animals in some ways.”).

¹⁹ Cf. *Reeves*, 252 A.3d at 945 (Hotten, J., dissenting) (“[E]xtending legal personhood to pets on a limited basis to recover for emotional damages for the pet’s grossly negligent injury or death could present an incremental change to Maryland tort law.”).

As Dr. Joyce Poole attested in her second supplemental affidavit:

[T]he [NhRP's expert] affidavits represent, in part, the body of knowledge acquired over 46 years of study of regular group sightings, family censuses, scan and focal samples, that amount to hundreds of thousands of data points of several thousand individually known free-living elephants in Amboseli, Kenya, quite a number of whom have been alive throughout these four and a half decades. In sum, the affidavits are a true representation of an elephant's life. . . . My affidavit included over 70 references to scientific research of which 25 were based on the study of these elephants.

(A-474, para. 5). The common law cannot evolve more slowly or incrementally as this Court "is only being asked to recognize one right for Happy." NhRP's Br. 17. However, by urging this Court to "reject Appellant's request to confer habeas corpus rights on Happy," the trade group is urging this Court not to evolve the common law at all. Amicus Br. 2.

The trade group would have this Court ignore: (1) Judge Fahey's statement that a chimpanzee's entitlement to habeas corpus relief "will depend on our assessment of the intrinsic nature of chimpanzees as a species," 31 N.Y.3d at 1058 (Fahey, J., concurring); (2) the scientific evidence regarding the intrinsic nature of elephants; and (3) the long-established understanding that "the common law of this State is not an anachronism, but is a living law which responds to the surging reality of changed conditions." *Millington v. Southeastern El. Co.*, 22 N.Y.2d 498, 509 (1968) (quoting *Gallagher v. St. Raymond's R. C. Church*, 21 N.Y.2d 554, 558

(1968)). This Court has “the duty . . . to bring the law into accordance with present day standards of wisdom and justice rather than with some outworn and antiquated rule of the past.” *Woods v. Lancet*, 303 N.Y. 349, 355 (1951) (internal citation and quotations omitted). Indeed, it “is the strength of the common law to respond, albeit cautiously and intelligently, to the demands of commonsense justice in an evolving society. . . . That time has arrived.”²⁰ *Thyroff v. Nationwide Mut. Ins. Co.* 8 N.Y.3d 283 (2007) (internal citation and quotations omitted).

The trade group accuses the NhRP of attempting to “jettison the pragmatic, cautious incrementalism of common-law decisionmaking” in conflict with *Barker v. Parnossa, Inc.*, 39 N.Y.2d 926, 927 (1976) (Breitel, C.J., concurring). Amicus Br. 13. However, by asking about dolphins, Chihuahuas, grasshoppers, dogs, orangutans, pigs, octopuses, chimpanzees, antelope, platypuses, sea turtles, baboons, rabbits, mice, rats, and Syrian hamsters, Amicus Br. 5, 9, 12, 25, it is the trade group that is asking this Court to “disrupt the essential pragmatism of the common law by excessive devotion to the promulgation of abstract ideologies.”²¹ *Barker*, 39 N.Y.2d at 927 (Breitel, C.J. concurring).

²⁰ See also *Woods*, 303 N.Y. at 351 (“I think, as New York State's court of last resort, we should make the law conform to right.”); *People v. Molineux*, 6 Bedell 264, 310 (1901) (“[O]ur own common law . . . is the product of all the wisdom and humanity of all the ages.”); NhRP’s Br. 21-23 (discussing why this Court must update the common law).

²¹ The trade group’s argument that “it would be costly and time-consuming for courts to superintend” the transfer of other nonhuman animals is irrelevant and wrong. Amicus Br. 11.

This Court should approach the resolution of Happy’s case as it did in *Greene v. Esplanade Venture Partnership*, 36 N.Y.3d 513 (2021), a common law case the NhRP cited and the trade group does not distinguish. NhRP’s Br. 17-18. In *Greene*, this Court recognized its single “task” was “simply . . . to determine whether a grandchild may come within the limits of her grandparent’s ‘immediate family,’ as that phrase is used in zone of danger jurisprudence.” *Id.* at 516. Under this Court’s “circumspect approach,” it evolved the common law by concluding that a grandchild does come within those limits and had no problem leaving “[u]nsettled” whether other categories of individuals also qualify as “immediate family.” *Id.* Similarly, this Court’s single “task” is “simply” to determine whether it should recognize Happy’s common law right to bodily liberty protected by habeas corpus. As in *Greene*, this Court can evolve the common law by recognizing Happy’s one right and leave “unsettled” whether a member of another species may invoke the protections of habeas corpus.²²

Finding an appropriate facility for Happy was not at all “a costly and complex process.” *Id.* The NhRP presented the Trial Court with two renowned elephant sanctuaries that have agreed to take Happy at no cost to Respondents. (A-8; A-10). That is why the Trial Court found the NhRP’s arguments “extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit . . . to an elephant sanctuary on a 2300 acre lot.” (A-22).

²² See also *Bovsun v. Sanperi*, 61 N.Y.2d 219, 233 n.13 (1984) (evolving the common law to allow a plaintiff to recover for emotional distress caused by observing serious physical injury or death negligently inflicted upon an “immediate family” member, but stating it need not decide “the outer limits of ‘the immediate family’”); *Thyroff*, 8 N.Y.3d at 293 (evolving the common law to protect certain electronic records stored on a computer under a claim of conversion, but stating that, “[b]ecause this is the only type of intangible property at issue in this case, we do not consider

The trade group also makes unpersuasive “floodgates” arguments to deny Happy habeas corpus relief. *See Matter of Johannesen v. New York City Dept. of Hous. Preserv. & Dev.*, 84 N.Y.2d 129, 138 (1994) (A “[floodgates] argument is often advanced when precedent and analysis are unpersuasive.”). First, it states that if this Court were to rule in Happy’s favor, “New York courts would be inundated with claims on behalf of thousands of different species.” Amicus Br. 10. Second, it asserts that ruling in Happy’s favor would create a “system of private enforcement of animal-welfare laws” and harm medical research by “inviting countless legal actions.” *Id.* at 3.

But no local, New York State, or federal animal welfare statute or regulation grants the right to bodily liberty to any nonhuman animal.²³ *See* NhRP’s Reply Br.

whether any of the myriad other forms of virtual information should be protected by the tort”); *Norcon Power Partners v. Niagara Mohawk Power Corp.*, 92 N.Y.2d 458, 468 (1998) (evolving the common law by extending “the doctrine of demand for adequate assurance, as a common-law analogue,” but stating “[t]his Court needs to go no further in its promulgation of the legal standard as this suffices to declare a dispositive and proportioned answer to the certified question”); *Rooney v. Tyson*, 91 N.Y.2d 685, 688, 694 (1998) (evolving the common law by recognizing that an oral contract to train a boxer “for as long as the boxer fights professionally” is one for a “definite duration,” but stating “[w]e narrowly answer the core question as posed,” and “with a full appreciation of our heralded common-law interstitial developmental process”) (internal quotations and citations omitted).

²³ Notwithstanding the irrelevance of the animal welfare laws here, the trade group falsely asserts that “the current system of federal and state animal-welfare protections has proven extraordinarily effective at preserving the wellbeing of animals.” Amicus Br. 16. The trade group touts, among other things, the enforcement provisions of the Animal Welfare Act, including the requirement that the U.S. Department of Agriculture “must conduct at least one inspection of a research facility every year.” *Id.* at 17. But the trade group fails to inform the Court that, “in violation of the Animal Welfare Act (AWA), the [USDA] does not fully inspect research labs each year to ensure compliance with AWA standards.” *Secret Policy Uncovered Under the Freedom of Information*

7-8. In short, the recognition of Happy’s common law right to bodily liberty protected by habeas corpus cannot create “a system of private enforcement” of such laws.

This Court has also “rejected as a ground for denying a cause of action that there will be a proliferation of claims.”²⁴ *Tobin v. Grossman*, 24 N.Y.2d 609, 615 (1969). “It suffices that if a cognizable wrong has been committed that there must be a remedy, whatever the burden of the courts.” *Id.* See *Battalla v. State of New York*, 10 N.Y.2d 237, 241-42 (1961) (“even if a flood of litigation were realized by abolition of the exception [prohibiting recovery for injuries incurred by fright

Act Shows USDA Does Not Inspect Research Labs as Required by the Animal Welfare Act, Harvard Law School Animal Law & Policy Program (May 5, 2021), <https://bit.ly/3D459OR>. Indeed, in “a significant—and apparently secret—change to how it oversees laboratory animal welfare,” the USDA merely mandated “partial” inspections of lab animal facilities. David Grimm, *USDA now only partially inspects some lab animal facilities, internal documents reveal*, SCIENCE (May 5, 2021), <https://bit.ly/31MV8rP>. Between 2015 and 2020, “U.S. enforcement actions brought against licensed animal facilities fell by 90 percent.” Rachel Fobar, *USDA accused of ignoring animal welfare violations in favor of business interests*, NAT. GEO. (Oct. 13, 2020), <https://on.natgeo.com/3o7bVx7>. The Commerford Zoo continues to operate although it has been cited “more than 50 times for Animal Welfare Act violations relating to its animals.” Rachel Fobar, *Roadside Zoo elephants suffered for years before dying, new records reveal*, NAT. GEO. (July 13, 2021), <https://on.natgeo.com/3qjwKYT>. The trade group further touts the “well-defined private accreditation standards” from such organizations as the Association of Zoos and Aquariums, Amicus Br. 21, but Dr. Poole’s “more than four decades long study of free living elephants shows that the AZA specifications are woefully inadequate for meeting the needs of elephants.” (A-479, para. 27).

²⁴ Lord Manfield famously stated in *Somerset v. Stewart*, 1 Lofft. 1, 17 (KB 1772), “fiat justitia, ruat ccelum” (let justice be done though the heavens may fall). COMP-170. “The heavens did not fall, but certainly the chains of bondage did for many slaves in England.” Paul Finkelman, *Let Justice Be Done, Though the Heavens May Fall: The Law of Freedom*, CHI.-KENT L. REV., Vol. 70, No. 2 at 326 (1994).

negligently induced], it is the duty of the courts to willingly accept the opportunity to settle these disputes.”); *Matter of Nonhuman Rights Project, Inc. v. ex rel. Hercules and Leo v. Stanley*, 49 Misc.3d at 772 n.2 (relying upon *Tobin*, rejecting “floodgates argument” in chimpanzee habeas corpus case as not being “a cogent reason for denying relief”); *Greene*, 36 N.Y.3d at 538 n.5 (Rivera, J., concurring) (“Courts are on shaky justificatory ground to begin with when they shape substantive law to avoid an increase in their workloads.”) (citing Marin K. Levy, *Judging the Flood of Litigation*, 80 U. CHI. L. REV. 1007, 1057 (2013)).²⁵

C. The trade group’s other arguments for denying Happy habeas corpus relief are likewise erroneous

Citing *Boumediene v. Bush*, 553 U.S. 723, 798 (2008), the trade group misrepresents habeas corpus by claiming it “is merely a procedural vehicle that

²⁵ See also *Schultz v. Barberton Glass Co.*, 4 Ohio St.3d 131, 133 (1983) (“It is the business of the law to remedy wrongs that deserve it, even at the expense of a ‘flood of litigation’; and it is a pitiful confession of incompetence on the part of any court of justice to deny relief upon the ground that it will give the courts too much work to do . . . Even if the caseload increases, the ‘proper remedy’ is an expansion of the judicial machinery, not a decrease in the availability of justice.”) (internal quotations and citation omitted); *Sinn v. Burd*, 486 Pa. 146, 163 (1979) (“(T)he fundamental concept of our judicial system (is) that any (caseload) increase should not be determinative or relevant to the availability of a judicial forum for the adjudication of impartial individual rights.”) (internal quotations and citation omitted); *Falzone v. Busch*, 45 N.J. 559, 567 (1965) (“And, of more importance, the fear of an expansion of litigation should not deter courts from granting relief in meritorious cases; the proper remedy is an expansion of the judicial machinery, not a decrease in the availability of justice.”); *Robb v. Pennsylvania R. Co.*, 8 Storey 454, 463 (1965) (“It is the duty of the courts to afford a remedy and redress for every substantial wrong. . . . Neither volume of cases, nor danger of fraudulent claims, nor difficulty of proof, will relieve the courts of their obligation in this regard.”).

permits prisoners to challenge their detention as unlawful under other constitutional and statutory provisions.” Amicus Br. 6. However, habeas corpus may be invoked when a detention is unlawful under the *common law*, as in Happy’s case.²⁶ *See, e.g., Boumediene*, 553 U.S. at 747 (citing *Somerset v. Stewart*, 1 Lofft. 1 (KB 1772) [COMP-160] (ordering enslaved Black individual free pursuant to common law habeas corpus)).²⁷ It is thus untrue that the NhRP “has not identified any cognizable basis to conclude that Happy’s confinement at the Bronx Zoo is *unlawful*—a requirement for habeas relief,” Amicus Br. 13, since the NhRP has consistently maintained that Happy’s imprisonment at the Bronx Zoo is unlawful because it violates her common law right to bodily liberty protected by habeas corpus.²⁸ (A-48, para. 54); NhRP’s Br. 9, 54.

²⁶ *Boumediene* does not state that the reach of habeas corpus is limited to “constitutional and statutory provisions.” Amicus Br. 6. It refers to “[t]he laws and Constitution,” 553 U.S. at 798, and “[t]he laws” include the common law. As Happy’s case is a common law case, the trade group’s discussion of “constitutional provisions, such as the Due Process Clause and the Fourth Amendment, and statutory restrictions” is irrelevant. Amicus Br. 11.

²⁷ *See also Lemmon*, 20 N.Y. at 617 (“slavery is repugnant to natural justice and right,” while “liberty is the natural condition of men”); *People ex. rel Caldwell v. Kelly*, 35 Barb. 444, 457-58 (Sup. Ct. 1862) (Potter, J.) (“Liberty and freedom are man’s natural conditions; presumptions should be in favor of this construction.”); *Oatfield v. Waring*, 14 Johns. 188, 193 (Sup. Ct. 1817) (“all presumptions in favor of personal liberty and freedom ought to be made”).

²⁸ The trade group also misrepresents the nature of “the Suspension Clauses of the United States and New York Constitutions” by asserting that they do not “apply” to nonhuman animals. Amicus Br. 6. The Suspension Clauses prohibit the legislature from suspending access to habeas corpus unless “in Cases of Rebellion or Invasion.” U.S. Const. art. I, § 9, cl. 2; N.Y. Const. art. 1, § 4 (same). They do not determine who may invoke the protections of habeas corpus.

Contrary to the trade group’s assertion, Happy’s immediate release and transfer to an elephant sanctuary does “vindicate” her common law right to bodily liberty protected by habeas corpus. Amicus Br. 15. Imprisoned at the Bronx Zoo, Happy is unable to “exercise her autonomy in meaningful ways, including the freedom to choose where to go, what to do, and with whom to be.” (A-37, para. 19). Therefore, sending her to an “environment that respects her autonomy to the greatest degree possible, as close to her native Asia as may be found in North America” would vindicate the deprivation of her right to bodily liberty. (A-49, para. 57). *See also Stanley*, 49 Misc.3d at 753 (“The great writ of habeas corpus lies at the heart of our liberty, and is deeply rooted in our cherished ideas of individual autonomy and free choice.”) (internal quotations and citations omitted). As Happy cannot be released into the wild, an elephant sanctuary on thousands of acres filled with elephants, trees, forests, rivers, and lakes—not her one-acre prison—is the only environment where Happy can realize her autonomy to the greatest extent possible.²⁹

Lastly, the trade group claims it would be “exceptionally unwise” for this Court to “expand the availability of habeas relief to other species” because the New York legislature has “never seen fit to confer legal personhood on animals in any context.” Amicus Br. 8. But in 1996, the legislature enacted EPTL § 7-8.1, which

²⁹ Dr. Poole attested that the “orders of magnitude of greater space” offered in sanctuaries “permits autonomy and allows elephants to develop more healthy social relationships and to engage in near natural movement, foraging, and repertoire of behavior.” (A-478, para. 19).

allows “domestic or pet animals” to be “beneficiaries” of legally enforceable trusts. NhRP’s Br. 20-21, 29-30, 48; NhRP’s Reply Br. 12. These nonhuman animals are “persons” as only “persons” can be trust beneficiaries.³⁰ See BLACK’S LAW DICTIONARY (11th ed. 2019) (“beneficiary” is “[a] person to whom another is in a fiduciary relation . . . ; esp., a person for whose benefit property is held in trust.”); EPTL § 1-2.18 (“A testamentary beneficiary is a person in whose favor a disposition of property is made by will.”).

Conclusion

Happy’s case is the first of its kind in this Court and exemplifies how the common law can and should evolve. The trade group’s arguments for denying Happy habeas corpus relief constitute poor attempts to distract from the injustice of her imprisonment. “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.” *Obergefell v. Hodges*, 576 U.S. 644, 671 (2015).

This Court should recognize Happy’s common law right to bodily liberty protected by habeas corpus, order her immediate release pursuant to CPLR 7010(a),

³⁰ Happy is the beneficiary of a trust created by the NhRP. (A-83-91).

and remit the case to the Trial Court to determine whether Happy will be transferred to The Elephant Sanctuary in Tennessee or Performing Animal Welfare Society.

Dated: December 3, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth Stein". The signature is fluid and cursive, with the first name "Elizabeth" written in a larger, more prominent script than the last name "Stein".

Elizabeth Stein, Esq.
5 Dunhill Road
New Hyde Park, New York 11040
(917) 846-5451
Fax: (516) 294-1094
lizsteinlaw@gmail.com

Steven M. Wise, Esq.
*(of the Bar of the State of
Massachusetts)*
5195 NW 112th Terrace
Coral Springs, Florida 33076
(954) 648-9864
wiseboston@aol.com

Attorneys for Petitioner-Appellant

**NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, corporate disclosure statement, questions presented, statement of related cases, or any authorized addendum containing statutes, rules, regulations, etc., is 5,922 words.

Dated: December 3, 2021



Elizabeth Stein, Esq.

5 Dunhill Road

New Hyde Park, New York 11040

(917) 846-5451

Fax: (516) 294-1094

lizsteinlaw@gmail.com

Attorney for Petitioner-Appellant

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
EXPRESS NEXT DAY AIR**

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 December 3, 2021

deponent served the within: **RESPONSE TO AMICUS CURIAE BRIEF OF
NATIONAL ASSOCIATION FOR BIOMEDICAL RESEARCH**

upon:

PHILLIPS LYTLE LLP
One Canalside
125 Main Street
Buffalo, New York 14203
Tel.: (716) 847-8400
Fax: (716) 852-6100
kmanning@phillipslytle.com
jchen@phillipslytle.com
wrossi@phillipslytle.com
Attorneys for Respondents-Respondents

the address(es) designated by said attorney(s) for that purpose by depositing **3** 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.

Sworn to before me on December 3, 2021



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



Job# 307879

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
EXPRESS NEXT DAY AIR**

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 December 3, 2021

deponent served the within: **RESPONSE TO AMICUS CURIAE BRIEF OF
NATIONAL ASSOCIATION FOR BIOMEDICAL RESEARCH**

upon:

**Quinn Emanuel Urquhart & Sullivan, LLP
Kathleen M. Sullivan Esq.
51 Madison Avenue, 22nd Floor
New York NY 10010-1603
Phone: (212) 849-7000
Attorney for *Amicus Curiae* National Association for Biomedical Research**

the address(es) designated by said attorney(s) for that purpose by depositing 1 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.

Sworn to before me on December 3, 2021



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



Job# 307879