

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.

**OPPOSITION TO MOTION OF LAW PROFESSORS TO
APPEAR AS *AMICI CURIAE***

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PRELIMINARY STATEMENT

Respondents-Respondents James J. Breheny and Wildlife Conservation Society (“Respondents”) respectfully submit this memorandum in opposition to the motion of Law Professors (“Amici”) to appear as *Amici Curiae* on Petitioner-Appellant the Nonhuman Rights Project, Inc.’s (“NRP”) motion for leave to appeal.

ARGUMENT

Amici are a group of animal law professors interested in “guiding the evolution” of animal law.¹ Based on this interest—and presumably in the expansion of the courses they teach—Amici ask the Court to hear NRP’s appeal. Amici Br., p. 1. As their own publications reveal, however, even this narrow group of authors do not agree with NRP’s position (nor each other), let alone reflect consensus towards a new regime of animal rights. Neither Amici nor NRP represent the numerous industries, professionals, and New York State constituents who have an interest in whether or how New York might redefine the legal distinction between humans and animals. These interests are not represented on the narrow record before this Court, and Respondents respectfully contend that the Legislature provides the appropriate process to duly consider these varied viewpoints. Amici’s splintered views on the questions NRP presents only highlight the diversity and lack of consensus among the multitude of stakeholders on this issue, the vast majority of whom have no voice here. The Court should reject Amici’s brief and deny leave to appeal.

NRP claims elephants are autonomous and therefore “legal persons” with the right to “bodily liberty,” (A. 48-49) yet Amici purporting to support NRP diverge from this

¹ Proposed Brief of Amici Curiae Law Professors in Support of Plaintiff-Appellants, Mar. 8, 2021 (“Amici Br.”), p. 1.

fundamental premise. As one amicus professor explained, “abolitionists” who “oppose animal ownership, even if the animal is treated humanely”—as NRP does—instead “should embrace animal welfare statutes that meaningfully reduce suffering, even if doing so means that the abolitionist program as we know it ceases to exist.” Luis E. Chiesa, *Animal Rights Unraveled: Why Abolitionism Collapses into Welfarism and What it Means for Animal Ethics*, 28 GEO. ENVT’L L. REV. 557, 561, 576-77 (2016) (further noting “the claim that owning animals is morally wrong simply fails to resonate with most people.”) Another amicus rejects “autonomy” as a basis for animal rights—*i.e.*, the cornerstone for animal “personhood” presented by NRP—because autonomy under the law is a “liberal legalist norm[]” that “establishes a reductive standard by which to measure the value of animal life.” Maneesha Deckha, *Critical Animal Studies and Animal Law*, 18 ANIMAL L. 207, 229, 234 (2012).

The same is true for the other tenet underpinning NRP’s argument: that rights extend to animals because their cognitive capacity is similar to that of humans. A. 10, 11, 12, 37-39, 57. As one amicus wrote, this approach “is not respectful to animals because it implies that their worth is measured by reference to how they compare to humans.” Taimie L. Bryant, *Similarity or Difference as a Basis for Justice: Must Animals be Like Humans to be Legally Protected From Humans*, 70 L. & CONTEMPORARY PROBLEMS 207, 224 (2007). Yet another amicus similarly pointed out that “a significant limitation on this approach is that human characteristics become the measuring stick by which to judge the legal ‘oughts’ for animals.” David S. Favre, *Judicial Recognition of the Interests of Animals--A New Tort*, 2005 MICH. ST. L. REV. 333, 336 (2005).

These fault lines pervade a relatively small group of professors who *support* NRP's request to appeal. Of course, many scholars and professors who are not among Amici support advancing animal welfare *without* re-drawing fundamental legal principles as NRP proposes. *E.g.*, Martha C. Nussbaum, *Working with and for Animals: Getting the Theoretical Framework Right*, 94 DENVER L. REV. 609, 615 (2017); Jerrold Tannenbaum, *What is Animal Law*, 61 CLEV. ST. L. REV. 891, 934 (2013); Hon. Richard A. Posner, *Animal Rights*, 110 YALE L.J. 527, 533 (2000); Richard A. Epstein, *Animals as Objects, or Subjects, of Rights*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 143 (Cass R. Sunstein & Martha C. Nussbaum, eds. 2004). The narrow view presented by Amici thus illustrates—as the Appellate Division has advised NRP three times now—that animal rights “is an issue better suited to the legislative process.” *Nonhuman Rights Project, Inc. v. Breheny*, 189 A.D.3d 583, 583 (1st Dep’t 2020); *accord Nonhuman Rights Project, Inc. v. Lavery*, 152 A.D.3d 73, 80 (1st Dep’t 2017); *Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 153 (3d Dep’t 2014). Unified only by a shared interest in the field of animal law, Amici present no compelling reason for this Court to address and resolve an inherently legislative question, especially when Amici themselves cannot agree on the proper result.

In fact, several Amici appear to agree that the legislature *is* the proper forum to address this issue. David N. Cassuto, *Don't be Cruel (Anymore): A Look at the Animal Cruelty Regimes of the United States and Brazil with a Call for a New Animal Welfare Agency*, 43 B.C. ENVT'L AFF. L. REV. 1, 4 (2016) (“There must be a new regulatory body devoted to the conditions of animals.”); Jessica Rubin, *Desmond's Law: A Novel Approach to Animal Advocacy*, 24 ANIMAL L. 243, 261 (2018) (arguing a Connecticut animal rights statute “should serve as a model for other states to develop similar legislation and advocacy

programs,” as the law “provides a novel, cost-free and beneficial solution to the problem of under-enforcement of anti-cruelty laws.”); Darren Calley, *The Aggregation of Suffering in the Regulatory Context*, 7 J. ANIMAL ETHICS 1, 7 (2017) (praising European regulatory reforms as “an opportunity to recalibrate the scales to properly recognize the value of animals”) Luis E. Chiesa, *Animal Rights Unraveled: Why Abolitionism Collapses into Welfarism and What it Means for Animal Ethics*, 28 GEO. ENVT’L L. REV. 557, 561 (2016) (“[O]nce abolitionism is collapsed into a form of welfarism, there is little reason for abolitionists to refuse to cooperate with welfarist reforms that meaningfully reduce animal suffering.”) Amici’s generalized interest in this appeal as a point of discussion provides little cause to deviate from settled precedent directing NRP to the Legislature.

CONCLUSION

Respectfully, Amici’s submission underscores that this proceeding does not present a justiciable question. The Court should reject this submission and deny NRP’s motion for leave to appeal.

Dated: Buffalo, New York
March 22, 2021

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