

**S281614**

August 29, 2023

The Honorable Jorge E. Navarrete  
Clerk and Executive Officer  
Supreme Court of California 350 McAllister Street  
San Francisco, California 94102

Re: Letter of *Amicus Curiae*, Dr. Steven Tauber, Supporting Verified Petition for a Common Law Writ of Habeas Corpus, and Issuance of an Order to Show Cause in *In re NhRP on behalf of Amahle, Nolwazi, and Mabu On Habeas Corpus* (No. S281614)

Dear Mr. Navarrete,

Under California Rules of Court, rule 8.500(g), *Amicus Curiae*, I, Dr. Steven Tauber, submit this letter supporting the Verified Petition for Writ of Habeas Corpus and issuance of an order to show cause in the above-captioned case. Please transmit this letter to the justices for their consideration.

## **I. STATEMENT OF INTEREST OF AMICUS CURIAE**

I am a Professor of Political Science in the School of Interdisciplinary Global Studies at the University of South Florida. I am not an attorney; therefore, this letter will not address the legal issues concerning the standards of review. The Nonhuman Rights Project's (hereafter NhRP) Verified Petition for Writ of Habeas Corpus and other amicus letters provide expert legal analysis of that question. Rather, I am a political scientist who for the past 30 years has studied how social movements use litigation to bring about social change. My latest research focuses specifically on the politics of the animal advocacy movement in the United States and globally. My monograph *Navigating the Jungle: Law Politics, and the Animal Advocacy Movement* is the only book that analyzes the political context of animal advocacy litigation.<sup>1</sup> My forthcoming publications in the journals, *Society & Animals* and *International Relations*, examine animal advocacy on a global level.<sup>2</sup> Consequently, the purpose of this letter is to place the NhRP's litigation campaign for a single legal right on behalf of Amahle, Nolwazi, and Mabu (i.e., the right to bodily

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<sup>1</sup> Steven C. Tauber, *Navigating the Jungle: Law, Politics, and the Animal Advocacy Movement* (New York and London: Routledge, 2016).

<sup>2</sup> Steven Tauber, (2024, forthcoming). "Cross-National Measures of the Treatment of Animals," *Society & Animals* 32; Steven Tauber, (2023, forthcoming September). "The Global Animal Advocacy Movement in International Relations: Toward an Animal-Inclusive IR" *International Relations* 37(3).

liberty) in the context of interest group litigation, which has long been established in American law as means of effectuating social change.

Before explaining my argument, it is first necessary to state that the views expressed in this letter are purely my own. In no way do they represent the University of South Florida, the College of Arts & Sciences, or the School of Interdisciplinary Global Studies.

## II. INTEREST GROUPS AND LEGAL CHANGE

As stated above, the legal briefs filed in this case concentrate on the doctrinal rationale for granting review of this case, whereas this letter will emphasize the political and social importance of the NhRP's litigation. Of course, judges decide cases according to the "law"—the NhRP does make a compelling legal argument for review—not purely based on the politics of an issue or because a specific outcome is the "right thing to do." Still, an alternative perspective should provide a fuller understanding of this case; consequently, this letter will demonstrate that there is significant precedent for interest groups to present courts with novel legal arguments to advance social justice.

The story of *Brown v. Board of Education* best illustrates how interest groups employ litigation as a strategy to achieve social progress.<sup>3</sup> This landmark civil rights case did not emerge organically; rather, it was the product of a carefully planned campaign designed to achieve the policy goal of overturning the "separate but equal" doctrine and ending state-sponsored segregation. The National Association for the Advancement of Colored People Legal Defense and Education Fund (hereafter NAACP LDF) was established in 1940 specifically to use litigation to secure civil rights.<sup>4</sup> Civil rights activists recognized that the popularly accountable branches of government (legislatures, governors, and elected state judges) would not be receptive to their claims, especially because African Americans were disenfranchised in much of the United States. To overcome this political disadvantage, civil rights activists sought redress in federal court because the unaccountable judges were immune from the electoral pressures to preserve segregation.<sup>5</sup>

Accordingly, NAACP LDF attorneys, including Jack Greenberg, Charles Houston, and Thurgood Marshall, developed a long-term strategy to file litigation that would "chip away" at the "separate but equal" doctrine that had upheld segregation. The organization

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<sup>3</sup> *Brown v. Board of Education, Topeka Kansas*, 347 U.S. 483 (1954).

<sup>4</sup> LDF Legal Defense Fund, (2023), "History: We are the Country's First and Foremost Civil Rights Law Firm," Retrieved July 21, 2023, <https://www.naacpldf.org/about-us/history/>.

<sup>5</sup> For more on why politically disadvantaged groups employed litigation as a strategy, see Richard Cortner, (1968). "Strategies and Tactics of Litigants in Constitutional Cases," *Journal of Public Law* 17:287-307; Clement Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Case* (Berkeley, CA: University of California Press, 1959).

backed several cases that demonstrated state education facilities for African Americans were effectively unequal. Eventually, the NAACP LDF sponsored the *Brown v. Board of Education* case, which argued that state-mandated segregation violated the Fourteenth Amendment Equal Protection Clause. In addition to asking the U.S. Supreme Court to overturn the half-century “separate but equal” precedent, the NAACP LDF was seeking a remedy that would upend centuries of the long-established racial caste system in the American South.<sup>6</sup> Moreover, the NAACP LDF did not rely exclusively on legal argument; rather, the organization also submitted social science evidence demonstrating that segregation harms African American school children.<sup>7</sup> In Footnote 11 of the opinion,<sup>8</sup> the Supreme Court cited social science evidence demonstrating that segregation harmed Black schoolchildren.<sup>9</sup>

The NAACP LDF’s influence on the landmark *Brown v. Board of Education* epitomizes the significance of interest group litigation, in which organizations use litigation as a strategy to effectuate social change. The Political Science, Sociology, and Law & Society literatures are replete with studies demonstrating how interest groups develop complex strategies and novel legal arguments that have resulted in court decisions that

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<sup>6</sup> For more on the NAACP LDF’s long term strategy culminating in *Brown v. Board of Education*, see Jack Greenberg, *Crusaders in the Court: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994); Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* (New York: Knopf, 1976).

<sup>7</sup> LDF Legal Defense Fund, (2023), “Brown v. Board and the ‘Doll Test,’” Retrieved July 21, 2023, from <https://www.naacpldf.org/brown-vs-board/significance-doll-test/>.

<sup>8</sup> *Brown*, 347 U.S. at 495.

<sup>9</sup> For more on the significance of fn. 11, see Michael Heise, (2005), “Brown v. Board of Education, Footnote 11, and Multidisciplinary,” *Cornell Law Review* 90:279-320.

expanded civil rights for other racial and ethnic minority groups,<sup>10</sup> religious minorities,<sup>11</sup> women,<sup>12</sup> the LGBTQ community,<sup>13</sup> and the environment.<sup>14</sup>

### III. THE NHRP'S LITIGATION CAMPAIGN

The NhRP's work in this case is also an exemplar of interest group litigation. Founded in 1995, the NhRP is "dedicated solely to securing rights for nonhuman animals."<sup>15</sup> The founder, Steven Wise, is an established litigator and legal scholar, who has published groundbreaking work on animal rights.<sup>16</sup> He has lectured at numerous law schools throughout the world and has been the subject of impactful media coverage.<sup>17</sup>

Because it focuses on nonhumans, the issue of animal rights is new to civil rights discourse, but it is still vitally important for justice. Although some nonhuman animals have been proven to be autonomous, American law currently regards them as property; i.e., as "things" that belong to humans. The fact that elephants are autonomous, extraordinarily cognitively complex, and exceedingly social, exacerbates this problem. Although there are anti-cruelty statutes and AZA guidelines<sup>18</sup> that attempt to mitigate various abusive practices, elephants' lack of legal rights abides considerable mistreatment, especially being

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<sup>10</sup> See for example, Karen O'Connor and Lee Epstein, (1984). "A Legal Voice for the Chicano Community: The Activities of the Mexican American Legal Defense Fund," *Social Science Quarterly* 65:245-256.

<sup>11</sup> See for example, Frank Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State* (Princeton, NJ: Princeton University Press, 1976).

<sup>12</sup> Karen O'Connor, *Women's Organizations Use of the Court* (Lexington, MA: Lexington Books, 1980).

<sup>13</sup> Ellen Ann Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (Ann Arbor, MI: University of Michigan Press, 2005).

<sup>14</sup> Lettie Wenner, *The Environmental Decade in Court* (Bloomington, IN: Indiana University Press, 1982).

<sup>15</sup> Nonhuman Rights Project, (2023), "Our Mission and Values," Retrieved July 21, 2023, from <https://www.nonhumanrights.org/about-us/>.

<sup>16</sup> For example, see Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Cambridge, MA: Perseus Books, 2005).

<sup>17</sup> For more on Wise's career, see, Wikipedia, "Steven M. Wise," Retrieved July 21, 2023, from [https://en.wikipedia.org/wiki/Steven\\_M.\\_Wise](https://en.wikipedia.org/wiki/Steven_M._Wise).

<sup>18</sup> See, e.g., AZA Standards for Elephant Management and Care, Retrieved Aug. 14, 2023, from [https://assets.speakcdn.com/assets/2332/aza\\_standards\\_for\\_elephant\\_management\\_and\\_care.pdf](https://assets.speakcdn.com/assets/2332/aza_standards_for_elephant_management_and_care.pdf).

confined in conditions that cause pain and emotional distress. Ultimately, the NhRP is asking for an American court to rule that Amahle, Nolwazi and Mabu have a single right to bodily liberty, which would allow them to be freed from their imprisonment at the Fresno Zoo and released to a sanctuary where they can flourish.

Like the NAACP LDF's long-term strategy that culminated in *Brown v. Board of Education*, the NhRP's campaign to establish legal rights for some nonhuman animals has been a carefully planned strategy. Their legal argument is based on the recognition of legal personhood for some nonhuman animals under the Common Law Writ of Habeas Corpus. The organization has also amassed considerable scientific evidence demonstrating the cruel debilitating effects that captivity exerts on high functioning mammals, like elephants. In other states, they have litigated several cases that sought to establish legal rights for chimpanzees and additional elephants,<sup>19</sup> and although they have not won any cases,<sup>20</sup> judges do recognize the significance of their arguments. For example, in the case of *In the Matter of the Nonhuman Rights Project v. James J. Breheny* (38 N.Y.3d 555), the New York State Court of Appeals denied that Happy the elephant possesses a legal right, but two justices dissented.<sup>21</sup>

The NhRP's legal progress has undoubtedly been slow, but it is important to remember that the NAACP LDF's campaign to end segregation was also lengthy. Moreover, the NhRP's litigation campaign has demonstrably influenced media coverage and started a public conversation about animal rights in general and the treatment of high-functioning nonhuman mammals in particular.<sup>22</sup> Although judges' primary concern should not be the social impact of their decisions, they should not ignore the societal effects of

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<sup>19</sup> Nonhuman Rights Project, (2023), "The Clients We're Fighting For: Their Life Stories and Court Cases," Retrieved July 21, 2023, from <https://www.nonhumanrights.org/our-clients/>.

<sup>20</sup> Although no American court has ruled that animals possess legal rights, courts in other nations have established legal rights for nonhuman animals. The primary examples are Argentina (Michigan State University College of Law Animal Legal & Historical Center, (2023), "Orangutanga, Sandra s/Habeas Corpus," Retrieved July 21, 2023, from <https://www.animallaw.info/case/orangutana-sandra-s-habeas-corpus>); Ecuador (Michigan State University College of Law Animal Legal & Historical Center, (2023), "253-20-JH/22, The Case of Estrellita," Retrieved July 21, 2023, from <https://www.animallaw.info/case/253-20-jh22-case-estrellita>); and Pakistan (Nicole Pallotta, (2022, October 2), Islamabad High Court Holds that Animals Have Legal Rights," *Animal Legal Defense Fund*, Retrieved July 21, 2023, from <https://aldf.org/article/islamabad-high-court-holds-that-animals-have-legal-rights/#easy-footnote-bottom-10-30831>).

<sup>21</sup> *In the Matter of the Nonhuman Rights Project v. James J. Breheny*, (2022), New York State Court of Appeals, Retrieved July 21, 2023, <https://shorturl.at/L0467>.

<sup>22</sup> Tauber, *Navigating the Jungle*, 175-181

their decisions either. As legal scholar (and future U.S. Supreme Court Justice) Oliver Wendell Holmes wrote in his 1881 book *The Common Law*, “The life of the law has not been logic: it has been experience.”<sup>23</sup> In short, among legal reasons for granting review, I encourage you to consider the momentous social ramifications of at least hearing this case.

#### IV. CONCLUSION

In closing, there is no doubt that the NhRP’s goal of granting legal rights to some nonhuman animals rests on a novel legal argument. Nevertheless, the notion that organized groups sponsor litigation to achieve social change is common in American jurisprudence. This letter is not asking for the Court to rule in a particular fashion, but rather, it is for the Court to grant review by issuing an order to show cause so that the NhRP has an opportunity to have its important case heard.

Respectfully submitted,

/s/ Steven Tauber  
Dr. Steven Tauber

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<sup>23</sup> Oliver Wendell Holmes, *The Common Law* (Cambridge, MA: The Belknap Press of Harvard University Press, 1881 (2009)).

