DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Colorado Springs, CO 80903 **Petitioner**: NONHUMAN RIGHTS PROJECT, INC., on behalf of Missy, Kimba, Lucky, LouLou, and Jambo, v. **Respondents**: CHEYENNE MOUNTAIN ZOOLOGICAL SOCIETY, and BOB CHASTAIN, in his official capacity as President and CEO of Cheyenne Mountain Zoological Society.	▲ **COURT USE ONLY** ▲ Case Number: 2023CV301236 Div: 8
Attorneys for Respondents BROWNSTEIN HYATT FARBER SCHRECK, LLP John W. Suthers, #8492 Christopher O. Murray, #39340 Rosa L. Baum, #56652 675 Fifteenth Street. Suite 2900 Denver, CO 80202 Telephone: (303) 223-1100 Facsimile: (303) 223-1111 Email: cmurray@bhfs.com; rbaum@bhfs.com	

RESPONDENTS' MOTION TO DISMISS

Respondents Cheyenne Mountain Zoological Society ("CMZ") and Bob Chastain, in his official capacity as President and CEO of Cheyenne Mountain Zoological Society, (together "Respondents"), through undersigned counsel, respectfully move, pursuant to C.R.C.P. Rules 12(b)(1) and 12(b)(5), the Court to dismiss Petitioner's Verified Petition for Writ of Habeas Corpus (the "Petition") for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted and in support state:

Certificate of Compliance with C.R.C.P 121 § 1-15(8): Undersigned counsel certifies he conferred with Petitioner's counsel regarding the relief requested in this Motion. Petitioner opposes the requested relief.

I. INTRODUCTION

For the better part of a decade Petitioner Nonhuman Rights Project has filed groundless petitions for writs of habeas corpus against zoos in courts across the United States. Each and every time they have lost. Because the writ of habeas corpus can only vindicate the right of a human being against unlawful detention, it is necessarily unavailable to nonhuman animals or those who would purport to sue in these animals' interests. Petitioner now brings a substantively identical Petition against CMZ: one of the preeminent and most highly-acclaimed zoos in the world. In doing so, it forces CMZ to expend its contributors' funds—funds that would otherwise go toward the welfare of the animals at CMZ—and forces this Court to take time away from serious matters. The Court should dismiss the Petition and, because the Petition is substantially frivolous, groundless, and vexatious, award CMZ its fees and costs pursuant to Colorado Revised Statute section 13-17-102.

II. BACKGROUND[1]

Accreditation inspections by the Association of Zoos and Aquariums (the "AZA")[2] demonstrate that CMZ is the gold standard for humane treatment of animals at zoos. As relevant here, CMZ is home to five female African elephants: Kimba, Lucky, Missy, LouLou, and Jambo.

[1] The facts laid out in this Background are provided for context only in light of the outrageous and spurious nature of the allegations in the Petition. None of Respondents' arguments for dismissal rely on these facts in any way and the Court need not rely on them in dismissing the Petition.

[2] CMZ has been continually accredited by the AZA for over 35 years.

Care for each of these elephants is centered around eudaemonia—meaning happiness and welfare. Specifically, not only does the elephant care team monitor the nutritional needs of the elephants, caregivers routinely and systematically observe the elephants' behavior to maintain a dynamic program responding to their needs. As highly intelligent animals, the CMZ elephants need diversity and stimulation. Therefore, CMZ's elephant care program includes 3-5 daily stimulating training sessions for each elephant, opportunities to move from yard to yard, daily medical screenings, and even daily elephant yoga sessions. And because of the mutual trust between the elephants and their caregivers built up as a result of CMZ's exclusive positive reinforcement approach, the elephants actively participate in their own healthcare, including voluntary oral medications; body, tusks, teeth, eyes, ears, feet, and mouth exams; and x-rays. Its remarkable care of elephants, as well as all other animals at the zoo, has led to CMZ consistently receiving glowing accreditation inspection reports from the AZA. In fact, CMZ's most recent inspection resulted in a completely clean report—one of only four in AZA history.[3]

It is therefore disheartening that Petitioners have chosen CMZ as their next target for their frivolous and unfounded claims. Petitioner has attempted to litigate, in various courts, the same claim for a decade—each suit resulting in a loss. This is no longer a novel claim, rather it has been repeatedly rejected and now only serves to harass zoos, waste judicial resources, and act as a fundraising gimmick for Petitioners. Thus, this Court need not entertain Petitioners' non-

[3] In addition to CMZ's unfaltering commitment to providing these five elephants with the best possible care, CMZ has partnered with Tsavo Trust, a frontline elephant conservation organization that is working to save wild African elephants and rhinos in Kenya. Through various efforts, CMZ has sent $608,000 directly to elephant conservation.

meritorious claims, should dismiss the petition in Respondents' favor, and should award Respondents their reasonable costs, including attorneys' fees.

III. ARGUMENT

A. Because habeas corpus is not available to nonhuman animals, Petitioner has failed to state a claim on which relief can be granted.

1. *The liberty interest guaranteed by the writ of habeas corpus does not extend to nonhuman animals.*

Non-human animals, like the elephants at CMZ, are incapable of bearing the responsibilities of personhood and therefore are not entitled to the rights of personhood. Courts have repeatedly observed that "legal personhood has consistently been defined in terms of both rights *and duties*." *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D. 3d 148, 151 (3d Dept. 2014), leave to appeal denied 38 N.E.3d 828 (N.Y. 2015) (emphasis in original); *Person*, Black's Law Dictionary (11th ed. 2019) (defining person as a "human being" or an "entity" having "the rights and duties of a human being"); *see also* Richard L. Cupp Jr., *Children, Chimps, and Rights: Arguments from "Marginal" Cases*, 45 Ariz. St. L.J. 1, 13 (2013) ("rights are connected to moral agency and the ability to accept societal responsibility in exchange for [those] rights"); *Justice by and through Mosiman v. Vercher*, 518 P.3d 131, 136 (Or. Ct. App. 2022) (citing William Blackstone, 1 *Commentaries on the Laws of England* 123 (1771)) ("Under the English common law, only human beings and legal entities created by human beings were considered 'persons' capable of holding and asserting legal rights."). Therefore, the human right to liberty is saddled

with the obligations and responsibilities required of each of us to be part of a free and functioning society.[4]

The writ of habeas corpus is attributed to *persons*, not nonhuman animals, because it carries with it commensurate responsibilities associated with human liberty interests. Like each of the statutes to which Petitioners have cited in their litigation over the years, Colorado's statutory provision of habeas corpus is expressly directed to any "person," meaning any human being. *See* C.R.S. § 13-45-101–102; *Culver v. Samuels*, 37 P.3d 535, 536 (Colo. App. 2001) (quoting *Webster's Third New International Dictionary* 1686 (1968)) ("The word 'person' means an 'individual human being.'"); *accord People v. Grosko*, 491 P.3d 484, 489 (Colo. App. 2021); *see also Nonhuman Rights Project, Inc. v. R.W. Commerford and Sons, Inc.*, 216 A.3d 839, 844 (Conn. App. 2019) (concluding "no indication that habeas corpus relief was ever intended to apply to a nonhuman animal, irrespective of the animal's purported autonomous characteristics"); *Lavery*, 124 A.D. 3d at 150 ("animals have never been considered persons for the purposes of habeas corpus relief, nor have they been explicitly considered as persons or entities capable of asserting rights for the purpose of state or federal law"). This Court need not humor Petitioner's attempt to create ambiguity in the law where none exists. *See Rowley v. City of New Bedford*, No. 20-P-257, 2020 WL 7690259, at *2 (App. Ct. Mass. Dec. 28, 2020) (citing *Com. v. Cass*, 467 N.E. 2d 1324,

[4] It is of course axiomatic that the United States Constitution protects the fundamental human rights to life, liberty, and property. Each right is guarded in turn, with life being the most staunchly preserved, and property rights allowing the most encumbrances by government. *See Buchanan v. Warley*, 245 U.S. 60, 74–75 (1917). John Locke explained that the social compact on which our society depends "posits that all individuals are born with certain natural rights and that people, in freely consenting to be governed, enter a social compact with their government by virtue of which they relinquish certain individual liberties in exchange 'for the mutual preservation of their lives, liberties and estates.'" J. Locke, 'Two Treatises of Government,' Book II (Hafner Library of Classics Ed. 1961).

1325 (Mass. 1984)) ("the word 'person' is synonymous with the term 'human being.'"); *see also Person*, Black's Law Dictionary (11th ed. 2019) (defining person as a "human being"). As the Court of Appeals of New York explained:

> The selective capacity for autonomy, intelligence, and emotion of a particular nonhuman animal species is not the determinative factor in whether the writ is available as such factors are not what makes a person detained qualified to seek the writ. Rather, the great writ protects the right to liberty of humans *because they are humans* with certain fundamental liberty rights recognized by law.

Nonhuman Rights Project, Inc. v. Breheny, 197 N.E.3d. 921, 927 (N.Y. 2022) (emphasis added). Access to habeas corpus does not depend on emotional capacity or intelligence; it depends, as it should, on the mere fact that the subject of the writ is a human being.

> 2. *The common law writ of habeas corpus—on which Petitioner relies—is narrower than the writ protected by the federal and state constitutions.*

The Petition, seemingly in an attempt to appear nuanced, does not seek the recognition of a constitutional right for these elephants but rather grounds the argument in the common law. *See* Petition ¶ 132. But Petitioner's focus on the common law writ of habeas corpus does not change the fact that the writ is only available to human beings. Indeed, common law habeas corpus is, if anything, narrower than the constitutional writ. As observed by the Supreme Court, history taught the Framers that "the common-law writ [of habeas corpus] all too often had been insufficient to guard against the abuse of monarchial power" employed against human beings. *Boumediene v. Bush*, 553 U.S. 723, 739–40 (2008). For in fact, the writ does not trace its origins back to a theory of liberty, but rather to one of power, arising from the royal prerogative. Halliday & White, *The Suspension Clause: English Text, Imperial Contexts, and American Implications*, 94 Va. L. Rev. 575, 594 (2008). Hence, under common law, the writ was not a right, it was a privilege. *Id.* Accordingly, the development of the common law writ did

> not primarily occur[] because King's Bench justices saw themselves as defenders of the natural rights of humans, or even of the liberties of the king's subjects. Instead, it had primarily occurred because the privilege of habeas corpus, as exemplified in a common law writ, allowed King's Bench justices to co-opt for their own uses the greatest authority in England: the king's.

Id. at 630. As explained by Chief Justice Sir John Popham in 1605, "The reason why the common law has such great regard for the body of a man "is so that he may be ready to preserve the king." *Id.* at 600; *see also* 2 J. Story, Commentaries on the Constitution of the United States § 1341, p. 237 (3d ed. 1858) (attributing the right to the king by noting that the writ ran "into all parts of the king's dominions; for it is said, that the king is entitled, at all times, to have an account, why the liberty of any of his subjects is restrained"). Our conception of the writ as the bastion of an individual's human right to liberty is a modern interpretation molded outside the common law.

The writ acquired its "full and present importance," as we understand it today, through legislation. *See* Rex Collings, *Habeas Corpus for Convicts—Constitutional Right or Legislative Grace*, 40 Calif. L.Rev. 335, 336 (1952). The Habeas Corpus Act of 1679, not the common law writ itself, has been dubbed "the most effective weapon yet devised for the protection of the liberty of the subject." 9 William S. Holdsworth, A History of English Law 118 (1926). William Blackstone praised the 1679 Act as a "second magna carta and stable bulwark of our liberties." 1 William Blackstone, Commentaries *137. And while the *common law* writ operated in all of the 13 original colonies, the failure to uniformly extend the 1679 Act led to prolonged and arbitrary detentions perpetrated by royal officials and ultimately formed the basis for an express grievance listed by the American revolutionists. *See* William F. Duker, *A Constitutional History of Habeas Corpus* 115 (1980); *A.H. Carpenter, Habeas Corpus in the Colonies*, 8 Am. Hist. Rev. 18, 21, 26 (1902); Alan Clarke, *Habeas Corpus: The Historical Debate*, 14 N.Y.L. Sch. J. Hum. Rts. 375,

393 (1998). Indeed, Alexander Hamilton believed it was the Act's "protection against the supreme example of arbitrary government . . . that had made the writ 'the bulwark of the British Constitution.'" Brief for Law Profs. with a Particular Interest in Habeas Corpus Law, as Amici Curiae Supporting Respondents, *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (No. 03-1027) (quoting *The Federalist* 84). Thus, "[a]lthough the writ of habeas corpus has a long common-law history, the legislature has enacted numerous statutes shaping its use." *R.W. Commerford*, 216 A. 3d at 845 (quoting *Kaddah v. Comm'r of Correction*, 153 A. 3d 1233, 1243 (Conn. 2017)).

But these protections are not what Petitioner claims. Therefore, even if this Court were to apply the common law writ of habeas to the elephants here in question, the limited breadth of the doctrine cannot provide the relief Petitioner seeks.

3. *Elephants at CMZ are not unlawfully confined and thus are not entitled to immediate release.*

Even if this Court were to apply the writ of habeas corpus to the elephants at CMZ, the question would become whether these Elephants are "detained" *unlawfully* and therefore must be *released*. *See Breheny*, 197 N.E.3d. at 926–27 ("The common law writ of habeas corpus therefore provides a means of redress for persons alleging detention . . . in violation of various statutory or constitutional rights and, on the merits, the question presented in a habeas proceeding is whether the relator's confinement is contrary to law."). They are not.

Colorado, like many other jurisdictions, recognizes that the writ of habeas corpus is designed to "determine whether a *person* is being detained *unlawfully* and therefore should be *immediately released* from custody." *Fields v. Suthers*, 984 P.2d 1167, 1169 (Colo. 1999) (emphases added); *see also Nonhuman Rights Project, Inc., ex rel. Kiko v. Presti*, 124 A.D. 3d 1334, 1335 (4th Dept. 2015) ("It is well settled that a habeas corpus proceeding must be dismissed

where the subject of the petition is not entitled to immediate release from custody" as "habeas corpus does not lie where a petitioner seeks only to change the conditions of confinement rather than the confinement itself."). Respondents address each element in turn.

First, the CMZ elephants are not confined unlawfully. Notably, the Petition does not ask the Court to evaluate the living conditions for Missy, Kimba, Lucky, LouLou, and Jambo, as they measure against state or federal statutes respecting the domestic possession of wild animals. *See, e.g.*, *Breheny*, 197 N.Y. 3d at 927 ("Persons seeking a writ of habeas corpus must establish more than just confinement to justify its issuance; they must show that their confinement is illegal."). The Petition's failure in this regard is telling: Colorado has demanding animal protection laws. The 2022 U.S. State Animal Protection Laws Ranking Report published by the Animal Legal Defense Fund, the nation's preeminent legal advocacy organization for animals, slotted Colorado as the fourth best state for animal protection laws.[5] Colorado criminalizes cruelty to animals, defined as knowingly, recklessly, or with criminal negligence overdriving; overloading; overworking; tormenting; depriving of necessary sustenance; unnecessarily or cruelly beating; allowing to be confined in a manner resulting in chronic or repeated harm; engaging in sexual acts; or otherwise failing to provide proper food, drink or protection to an animal. C.R.S. § 18-9-202. This sweeping definition provides ample basis for securing the humane treatment of animals.[6] A

[5] *Colorado Ranked Fourth Best State for Animal Protection Laws by Animal Legal Defense Fund*, ALDF (Feb. 1, 2023) *available at* https://aldf.org/article/colorado-ranked-fourth-best-state-for-animal-protection-laws-2022/.

[6] Additionally, as noted in previous litigation to which Petitioners were a party, "[habeas] corpus is not . . . the primary remedy for statutory or constitutional violation that result in unlawful restraint. Resort to habeas and '[d]eparture from traditional and orderly proceedings'—such as the appellate process—is 'permitted only when dictated . . . by reason of practicality and necessity.'" *Breheny*, 197 N.E. 3d at 927 (quoting *People ex. Rel. Keitt v. McMann*, 220 N.E.2d 653 (N.Y. 1966)).

challenge on these statutory grounds would demonstrate at least the potential for true concern for the elephants' wellbeing. It is likely that the absence of a statutory claim is a result of Petitioner's understanding that such a claim would be futile. As noted above, CMZ's treatment of his animals is exemplary. CMZ does not dispute the impressive capacities for intelligence and emotion elephants display; that is precisely why CMZ places such importance in its compliance with AZA requirements and Colorado law. CMZ has received glowing commendations from AZA for every year that the AZA has monitored the wellbeing of animals in its care.

Petitioners also chose not to employ the federal Animal Welfare Act to advance an argument that CMZ's elephants are unlawfully confined. *See* 7 U.S.C.A. §§ 2131–59; 4 Am. Jr. 2d Animals § 31. Congress expressly stated that it seeks "to insure that animals intended for . . . exhibition purposes . . . are provided humane care and treatment." 7 U.S.C.A. § 2131. Petitioners were not confronted with a dearth of legal protections for animals against alleged mistreatment. Petitioner's choice to instead bring its unfounded, frivolous claims, trivializes the importance of animal protection laws and thereby does a disservice to the very animals on whose behalf they claim to bring this case.

Second, Petitioner does not seek the immediate *release* of the elephants at CMZ; they seek the elephants' *transfer* to an alternative confinement. Colorado courts recognize only limited circumstances where habeas corpus relief may be available where complete discharge does not result and these limited circumstances are not applicable here. *See Fields*, 984 P.2d at 1169. As in *White v. Rickets*, 684 P.2d 239, 242 (Colo. 1984), "Petitioner alleges only that the place of [the] confinement should be altered." Failure to transfer an individual—even when ordered by the Colorado Parole Board—"does not in and of itself furnish any basis for [habeas corpus] relief." *Id.*

Therefore, "[t]he fact that greatest relief which could be afforded [the CMZ elephants] is a transfer between lawful confinements demonstrates the incompatibility of habeas relief in the nonhuman contest inasmuch as . . . the writ may be sustain only when a person is entitled to immediate release from an unlawful restraint of liberty." *Breheny*, 197 N.E. 3d at 928.

B. The Court should dismiss the Petition for lack of subject matter jurisdiction over the claim because Petitioner does not have standing.

Petitioner lacks standing to bring the present matter because, fundamentally, "elephants, not being persons lacked standing in the first instance." *R.W. Commerford and Sons, Inc.*, 216 A.3d at 842. Accepting Petitioner's argument not only requires that the Court recognize elephants as "persons," but "this recognition essentially would require [the court] to upend this state's legal system to allow highly intelligent, if not all, nonhuman animals the right to bring suit in a court of law." *Id.* at 844. Courts considering whether animals have standing to sue have repeatedly rejected the standing of nonhuman animals to sue. *See, e.g.*, *Lewis v. Burger King*, 344 Fed. Appx. 470, 472 (10th Cir. 2009) ("Lady Brown Dog, as a dog and putative co-plaintiff, lacks standing to sue . . . ."), cert. denied, 558 U.S. 1125 (2010); *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir. 2004) (quoting *Citizens to End Animal Suffering and Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45, 49 (D. Mass. 1993)) ("[I]f Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly."); *Legal for Cloud v. Yolo Cnty.*, No. 2:18-cv-09542, 2018 WL 11462074, at * 3 (C.D. Cal. Dec. 3, 2018) ("the cats have no standing by reason of their species"); *Vercher*, 518 P.3d at 137 ("it has long been the rule that only a natural or artificial person may bring a legal action to redress violation of rights"); *see also* Cass R. Sunstein, *Standing for Animals (With Notes on Animal Rights)*, 47 UCLA L. Rev. 1333, 1359 (2000) ("[T]he question of whether

animals have standing depends on the content of positive law. If Congress has not given standing to animals, the issue is at an end.").[7] Therefore, Petitioners lack standing because the elephants do not have standing in the first instance.

However, even if the Court were to find that the CMZ elephants have standing to sue in Colorado, Petitioners do not have standing to bring these claims as the elephants' "next friend." Critically, "'next friend' standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another." *Whitmore v. Arkansas,* 495 U.S. 149, 163 (1990). The doctrine "should be narrowly tailored in light of public policy concerns" because "however worthy and high minded the motive of 'next friends' may be, they inevitably run the risk of making the actual [party] a pawn to be manipulated on a chessboard larger than his own case." *Vercher,* 518 P.3d at 135 (quoting *Naruto v. Slater,* 888 F.3d 418, 431 (9th Cir. 2018) (Smith, J., concurring)). In fact, courts have expressly denied next friend standing to those seeking bring suits on behalf of animals, absent express authorization from Congress. *See Naruto,* 888 F.3d at 422.

Yet again assuming the Court entertains the idea that the CMZ elephants have standing to sue and that next friend standing to act on these elephants' behalf might therefore be available to Petitioner, Petitioner has not established the requisite elements to assert such standing. In matters involving habeas corpus, next friend standing—whereby a nonparty in interest can bring a matter in lieu of the injured party—has "at least two firmly rooted prerequisites." *See Fleming ex rel.*

[7] Additionally, granting standing to sue to nonhuman animals risks aggravating the delays in access to justice faced by so many human beings in the judicial system. Colorado courts are dealing with thousands of backlogged trials due to the COVID-19 pandemic. Adding to courts' burdens by opening the state's courts to litigation brought by particularly well-heeled and litigious human beings ostensibly on behalf of nonhuman animals would at once pervert and subvert our system of justice.

Clark v. LeMaster, 28 Fed. Appx. 797, 798–99 (10th Cir. 2001). First, the next friend "must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on [their] own behalf to prosecute the action" and second, the next friend "must be truly dedicated to the best interests of the person on whose behalf [they] seek[] to litigate." *Id.* at 799 (citing *Whitmore*, 495 U.S. at 163–64). Additionally, "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest." *Whitmore*, 495 U.S. at 163–64; *accord Franklin v. Dep't of Homeland Security*, No. 19-cv-00314, 2019 WL 2183411, at *2 (D. Colo. 2019).

Putting aside the repeated references to *persons*, Petitioners do not satisfy the required elements of next friend standing. As an initial point, the Petition does not allege sufficient facts to establish standing. *See Naruto*, 888 F.3d at 421. Secondly, Petitioners are not dedicated to the best interest of the CMZ elephants nor do they have a significant relationship with them. The CMZ expert elephant care team—a team with a combined 65 years of experience in elephant care—knows the unique needs and preferences of each of the elephants at CMZ. Similarly, Petitioner has not established a relationship with Kimba, Lucky, Missy, LouLou, and Jambo. In fact, it appears that various of the expert declarations attached to the Petition are recycled from Petitioner's prior litigation, and that only Dr. Bob Jacobs actually visited CMZ, observing the CMZ elephants for a mere two hours. *See* Petition ¶ 70. Allowing Petitioner to proceed as the 'next friend' of the CMZ elephants on this basis would be to allow the elephants to be used as pawns in Petitioner's fundraising, at the expense of their well-being. *See Vercher*, 518 P.3d at 135

Because this Petitioner is without standing to bring this action, the court lacks subject matter jurisdiction and the Petition should be dismissed under C.R.C.P. 12(b)(1). *See Tilikum ex*

rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Ent., 842 F.Supp.2d 1259, 1264 (S.D. Cal. 2012).

C. Petitioner's proper forum is the General Assembly.

Petitioner is free to make its arguments before the Colorado General Assembly. That body may be able to confer some of the rights of personhood on nonhuman animals—at least constructively. However, because such a decision—one that would go against current provisions authorizing the lawful keeping of and care for animals—"would have an enormous destabilizing impact on modern society . . . [it] is not this Court's role to make such a determination." *Breheny*, 197 N.E. 3d. at 929. Indeed,

> [g]ranting legal personhood to a nonhuman animal in such a manner would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts. Indeed, followed to its logical conclusion, such a determination would call into question the very premises of pet ownership, the use of service animals, and the enlistment of animals in other forms of work.

Id. Hence, the extension of the legal rights of human beings to animals to the extent possible or desirable, is an issue necessarily committed to the legislative process. *See Lewis*, 344 Fed. Appx. at 472; *accord Nonhuman Rights Project, ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 80 (1st Dept. 2017) ("the according of any fundamental legal rights to animals, including entitlement to habeas relief, is an issue better suited to the legislative process.")

While the common law is not static nor unchanging, the threshold conditions necessary to reconsider a common-law rule or doctrine are not present here. The Colorado Supreme Court has explained that "[w]e will depart from our existing law only if we are clearly convinced that (1) the rule was originally erroneous or is no longer sound because of changing conditions and

(2) more good than harm will come from departing from precedent." *Love v. Klosky*, 413 P.3d 1267, 1270 (Colo. 2018). While Petitioners recite these considerations they do not address them.[8]

Petitioner asks the Court to foment a monumental shift not only for our judicial system, but also in quotidian human affairs. Drastic consequences will follow should the Court entertain these arguments. Thus, the proper arena for this debate—if indeed such an arena exists—is the legislature, not the courts.

D. Request for Fees

Because Petitioner's claim here has been litigated in a series of courts for the better part of a decade and because this claim has been dismissed in every instance it has been brought, CMZ, as a public charity, cannot in good conscience fail to seek attorneys' fees from Petitioner and its attorneys. CMZ has been forced to expend its contributors' dollars to prepare this motion to dismiss and may yet need to spend further dollars on a reply in support and proceedings ancillary to this motion. Respondents therefore ask the Court to award them their costs and reasonable attorneys' fees pursuant to Colorado Revised Statute section 13-17- 102.

IV. CONCLUSION

For the reasons presented in this Motion to Dismiss, the Petition should be dismissed and the Court should award Respondents their reasonable costs incurred in addressing these frivolous claims, including attorneys' fees.

[8] Respondents feel compelled to register their profound disagreement with Petitioner's odious comparison of the dehumanization of enslaved Africans to the non-personhood of elephants non-personhood. Delineations of personhood based on race, as opposed to species, do not have a biological basis, and instead must be understood as mere "social construction[s]." Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. Rev. 1, 27 (1994).

Dated August 31, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2023, I electronically filed a true and correct copy of the foregoing **RESPONDENTS' MOTION TO DISMISS** via the Colorado Courts E-Filing System which will send notification of such filing and service upon all counsel of record:

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