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THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JOEL BAN and the NONHUMAN RIGHTS PROJECT, INC., on behalf of itself and its Utah-based supporters, *Plaintiffs,* v. STATE OF UTAH; DEREK BROWN, in his official capacity as the Attorney General of the State of Utah; SPENCER COX, in his official capacity as the Governor of Utah, *Defendants*.	**COMPLAINT FOR DECLARATORY RELIEF** **(Tier 2)** Case No. 250900869 Judge Hon. Robert Faust

INTRODUCTION

1. On March 21, 2024, Utah House Bill 249, Gen. Sess. (2024) (codified as Utah Code Ann. § 63G-31-101) ("H.B. 249"), was signed into law by Governor Spencer Cox, and took effect on May 1, 2024. A true and correct copy of H.B. 249 is attached as Exhibit A.

2. H.B. 249 is vague and unconstitutional on its face. The law prohibits a governmental entity from conferring the status of legal "person" (i.e., legal personhood) onto an enumerated list of nonhuman entities. H.B. 249 defines "governmental entity" as a court, the legislature, the legislative body of a political subdivision, and another state or political subdivision entity if the entity has adjudicatory or rulemaking authority. *Id*.

3. In effect, H.B. 249 prohibits the Utah judiciary and all Utah legislative assemblies (now and in the future) from granting any legal right to, or recognizing any legal right in, any entity that is not a member of the species *Homo sapiens*.

4. Consequently, H.B. 249 violates the Utah Constitution, specifically Art. V, § 1 (Separation of Powers), Art. I, § 23 (Franchises Forbidden), Art. I, § 11 (Open Courts Clause), and Art. VIII, § 1 (Judicial Function).

5. Legal personhood is simply the consequence of being a rightsholder. Under the law, "person" is merely a designation that attaches to any individual or entity with the capacity for one or more legal rights. It makes no difference whether a legal right manifests through the common law or the legislature because if you are a right(s)-holding entity, you are a legal person.

6. Importantly, granting legal personhood to an individual or entity for one purpose does not confer legal personhood for any other purpose (e.g., recognizing a right to liberty does not confer the right to vote).[1]

7. Legal personhood is not synonymous with being a human. In Utah, humans have numerous legal rights and are therefore legal persons. Unquestionably, nonhuman entities like corporations possess legal rights and are therefore also legal persons.

8. However, a corporation's personhood status is now in doubt due to H.B. 249's vague language. Even the legislation's sponsor, Rep. Walt Brooks, would not say—or does not know—what the law augurs for corporate personhood: "Brooks said that he believes only human beings should have 'personhood' under the law. He would not say whether he believes legal personhood for corporations, business partnerships, and other nonhuman entities should be abolished, but said 'this is the intent of the bill: to define personhood as a human being.'" Katie Surma, *Utah Supports "Personhood" for Corporations but Maybe Not Forests*, MOTHER JONES (Feb. 4, 2024), available at: https://shorturl.at/krKU4.

9. The Utah judiciary can grant and abolish legal rights.[2] Indeed, common law judiciaries have conferred legal rights onto previously rightless entities, hence legal personhood, since time immemorial.

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[1] *See, e.g., Byrn v. New York City Health & Hosps. Corp,* 31 N.Y.2d. 194, 200 (1972) (explaining that while unborn children have been "recognized as acquiring rights or interests in narrow legal categories," they have "never been recognized as persons in the law in the whole sense").

[2] *See, e.g., Kimball v. Dern*, 39 Utah 181, 181 (1911) ("The right of inspection of *books of this character* by a stockholder is a *common -law right*, and the granting or withholding of it . . . rests in the sound discretion of the court."); *Laney v. Fairview City*, 57 P.3d 1007, 1024 (Utah 2002), *holding modified on other grounds by Moss v. Pete Suazo Utah Athletic Comm'n*, 175 P.3d 1042 (Utah 2007) ("this court abolished the common law tort of criminal conversation and justified its abolition . . . on the ground that the cause of action was 'unfair and bad policy,' 'serve[d]' no useful purpose, was subject to abuse, and protected interests that were already adequately served by the tort of alienation of affections") (citation omitted); *Egbert v. Nissan Motor Co.*, 228 P.3d

10. In 1898, Utah adopted the common law as the rule of decision in all courts of the state and it remains the rule of decision today absent specific, preemptive legislation, which H.B. 249 is not. Utah Code Ann. § 68-3-1.

11. Rather than allow the courts to exercise their constitutionally mandated common law authority,[3] H.B. 249 eliminates the possibility of any court even considering the recognition of legal personhood in any entity that is not a human. This is nothing more than a legislative attempt to mandate legal conclusions, which violates the Constitution and is antithetical to how the common law evolves.

12. Of course, the legislature may create, define, and modernize the law. However, the legislature does not have unbridled power to deny individuals their common law rights and remedies. Nor can it constitutionally usurp the judiciary's proper sphere of action in common law matters.

13. On behalf of itself, its Utah-based supporters, and the public interest, Plaintiff Nonhuman Rights Project, Inc. ("NhRP), through undersigned counsel, seeks a declaration that the abstruse H.B. 249 is facially violative of the Utah Constitution.

PARTIES

A. Plaintiffs

14. Joel Ban is an attorney focusing on Veteran Compensation. Mr. Ban has always been passionate about helping people fight powerful governmental entities. He started his legal

737, 740 (Utah 2010) ("'The common law ... includes those rules of law which do not rest for their authority upon any express or positive statute or other written declaration, but rather upon statements of principles found in the decisions of the courts.'") (citation omitted).

[3] *See, e.g., Jenkins v. Swan,* 675 P.2d 1145, 1149 (Utah 1983) ("Constitutionally, the courts have the dual obligation to apply statutory and common law principles to a particular dispute and to evaluate those principles against governing constitutional standards.").

career in 2003 in Salt Lake City at Wildlaw, formerly a not-for-profit Environmental Public Interest law firm. Joel successfully litigated appeals in the Federal District Court and the U.S. Tenth Circuit Court of Appeals. Joel is dedicated to making his community a better place and has acted as *pro bono* legal counsel to the Utah Physicians for a Healthy Environment.

15. The NhRP is a 501(c)(3) non-profit corporation incorporated in the State of Massachusetts, with a principal address at 611 Pennsylvania Avenue SE #345, Washington, D.C. 20003. The NhRP is the only civil rights organization in the United States dedicated solely to securing legal rights for nonhuman animals.

16. Since 1995, the NhRP has worked to obtain legal rights for nonhuman animals scientifically proven to be autonomous such as chimpanzees and elephants. The NhRP has litigated in California, Colorado, Connecticut, Hawai'i, Michigan, and New York, while also assisting in international advancements for nonhuman animal law.

17. As of this writing, the NhRP counts 1,074 Utah residents as supporters.

B. Defendants

18. Defendant the State of Utah is responsible for upholding the Utah Constitution and accompanying legislation.[4] The State of Utah has enacted H.B. 249 and has authority through state and local officials to enforce it.

19. Defendant Derek Brown is the Attorney General of Utah, making him the state's chief legal officer. He exercises supervisory power over local prosecutors "in all matters pertaining

[4] Per Utah Code Ann. § 63G-7-401 et seq. and *id*. at (3)(b)(ii)(E), counsel for the State of Utah was noticed on July 31, 2024. A true and correct copy of that notice is attached as Exhibit B. The State of Utah responded on August 16, 2024, directing undersigned counsel to resend the notice to a different email address. A true and correct copy of the State of Utah's August 16, 2024, response is attached as Exhibit C. Per the State of Utah's directive, later that same day undersigned counsel resent the notice to the requested email addresses. A true and correct copy of undersigned counsel's August 16, 2024, email noticing to the State of Utah is attached as Exhibit D.

to the duties of the district and county attorney's offices," and "when required by the public service or directed by the governor," he assists local prosecutors in discharging their duties. Utah Code Ann. §§ 67-5-1(f), (h). Mr. Brown is sued in his official capacity.

20. Defendant Spencer Cox is the Governor of Utah. "Whenever a suit or legal proceeding is pending against the state," "he may direct the attorney general to appear on behalf of the state." Utah Code Ann. § 67-1-1(5). He may also "require the attorney general to aid any country attorney or district attorney in the discharge of his duties." *Id.* at (7). Mr. Cox is sued in his official capacity.

VENUE, JURISDICTION, AND STANDING

A. Venue

21. The Third Judicial District Court for Salt Lake County is the proper venue for this action because H.B. 249 was adopted in this county and because one or more Defendants reside in this county. Utah Code Ann. §§ 78B-3-302(3); 78B-3-307(1).

B. Jurisdiction

22. The Third Judicial District Court for Salt Lake County has jurisdiction over this Complaint. Utah Code Ann. §§ 78A-5-102(1)-(2); Utah Const. art. VIII, § 5.

23. This Court has the power to grant declaratory and equitable relief under Utah's Declaratory Judgment Act and its general equitable powers for enforcing the Utah Constitution. Utah Code Ann. § 78B-6-401 *et seq*.; Utah R. Civ. P. 57.

C. Standing

24. The NhRP, through undersigned counsel, has alternative standing to bring this case because: (1) it is an appropriate party to raise the issues in the immediate dispute (arguably, *the* most appropriate party); (2) the issues it seeks to raise are of sufficient public importance; and (3)

the issues are not more appropriately addressed by another branch of government through the political process.

25. "The preeminent case on Utah standing law is *Jenkins v. Swan*, 675 P.2d 1145 (Utah 1983). In that case, we recognized that there are two means by which a party can establish standing—the traditional test and the alternative test." *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960, 967 (Utah 2006).

i. Alternative Standing

26. Whether the NhRP can meet the traditional standing test is not determinative of its ability to challenge the constitutionality of H.B. 249. *Sierra Club*, 148 P.3d at 972 ("a failure to satisfy the traditional test is not necessarily fatal to a party's ability to assert an interest before the courts of this state") (citation omitted); *see also Gregory v. Shurtleff,* 299 P.3d 1098, 1102 (Utah 2013) ("Unlike in the federal system, our law recognizes that appropriate plaintiffs without individualized injury may nevertheless possess standing to bring certain claims treating issues of great public importance."); *id.* at 1105 ("Our public-interest standing doctrine is not unusual in state jurisprudence.").

27. Rather, a party "can prove standing [] by showing that it is an appropriate party raising issues of significant public importance." *Id.* Specifically:

> Under the alternative test, a petitioning party must first establish that it is an appropriate party to raise the issue in dispute before the court. A party meets this burden by demonstrating that it has "the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions" and that the issues are "unlikely to be raised" if the party is denied standing.

Sierra Club, 148 P.3d at 967.

28. Importantly, "the notion that a court must find the *most* appropriate party, thereby limiting standing under the alternative criteria to only one party in any given case, is unnecessary

and counter-productive." *Id.* This is because "the interests of justice will be served by providing a forum where qualified interested parties can be heard." *Id.* at 973.

29. "In addition, an appropriate party must still satisfy the second part of the alternative test before we will grant standing." *Id.* Specifically, "[o]nce a party has established that it is an appropriate party to the litigation, it must also demonstrate that the issues it seeks to raise 'are of sufficient public importance in and of themselves' to warrant granting the party standing." *Id.*

30. This determination is made by the Court "on a case-by-case basis," turning on whether "the issues are of sufficient weight" and "not more appropriately addressed by another branch of government pursuant to the political process." *Id.*

31. In *Sierra Club*, the matter's namesake sought to challenge a state-authorized permit allowing for the construction of a 270-megawatt coal-fired power plant in "an area known for stunning geography and outdoor recreational sites," including a national park. *Id.* at 963.

32. The Utah Supreme Court found that the Sierra Club had standing under the alternative test because they were "an appropriate party [with] 'the interest necessary to effectively assist the court in developing and reviewing all relevant and legal factual questions.'" *Id.* at 974 (citation omitted). The Court added that the Sierra Club "and its members have an interest in ensuring that the construction and operation of the plant comply with all applicable state and federal environmental laws," "thus preventing any needless and unlawful pollution or other environment destruction." *Id.*

33. The Court also took into consideration the fact that the Sierra Club was "equipped to effectively assist the court" because of its "experience in the environmental litigation forum." *Id.* The Court believed that the Sierra Club's focus on "the details of the Clean Air Act and the

harmful effect of particular emissions" were issues "unlikely to be raised unless it [wa]s allowed to intervene." *Id.*

34. "As to the public importance requirement, the issues in th[e] case [we]re sufficiently important to warrant granting the Sierra Club standing" because the permit-granting authority "must comply with all applicable state and federal laws." *Id.*

35. The Court concluded its alternative standing analysis by recognizing that the Sierra Club's allegations "are not more appropriately addressed by other branches of government" since "the legislative and executive branches have already addressed these issues by passing" the statutory authority governing air quality. *Id.*

ii. The NhRP's Alternative Standing

36. The NhRP is undoubtedly an appropriate party to dispute H.B. 249's constitutionality. As the only organization in the United States dedicated to securing legal personhood for nonhuman animals, it has the interest necessary to effectively assist the court in developing and reviewing pertinent legal and factual questions related to the conferral of legal rights through the common law. *See Gregory*, 299 P.3d at 1109 ("The 'appropriateness' of a party under the public-interest standing doctrine is a question of *competency*.").

37. Furthermore, Rep. Brooks cited the NhRP's New York habeas corpus litigation on behalf of an elephant named Happy as one of the reasons for introducing H.B. 249. *Compare Utah Legal Personhood Amendments: Hearing on H.B. 249*, 65th Leg., 2024 Sess. (UT 2024) (statement of Rep. Walt Brooks, Member, Utah House of Representatives) available at: https://shorturl.at/doEY0 ("We do have instances in the United States [] where it is happening. For example, there is a beloved elephant in New York City [and] people feel bad it is stuck in a cage; so, they are trying to get it personhood status."), *with Initiative & Referendum Inst. V. Walker*, 450

F.3d 1082, 1091 (10th Cir. 2006) ("It is clear that these individuals and organizations have far more than an abstract interest in whether Utah's supermajority requirement is constitutionally valid. . . . During the campaign for Proposition 5, supporters of the supermajority requirement explicitly mentioned one Plaintiff, the Humane Society of the United States, as an organization whose planned initiative should be obstructed. It would be peculiar to hold, now, that such plaintiffs are not affected.") (citations omitted).

38. In short, as an organization entirely focused on conferring legal personhood to nonhuman animals, the NhRP, and its supporters, have an interest in ensuring that the construction and application of H.B. 249 comply with the Utah Constitution.

39. Moreover, regarding the second part of the alternative standing test, the highly specific question of whether H.B. 249 complies with the Utah Constitution is "of a sufficient weight" to warrant alternative standing and this question cannot be "more appropriately addressed by another branch of government pursuant to the political process." *Sierra Club*, 148 P.3d at 973.

40. In *Gregory*, the Appellants alleged the law in question violated the Utah Constitution in four respects. The Supreme Court of Utah held the Appellants had alternative standing to bring the first two claims, but they did not have traditional or alternative standing to bring the last two claims. 299 P.3d at 1109.

41. Alternative standing was granted to the Appellants on the first two claims (Article VI claims) because "[t]he restrictions placed on legislative activity by Article VI, Section 22 of the Utah Constitution are part of the fundamental structure of legislative power articulated in our constitution." *Id.* at 1109. In other words, the Appellants sought "to enforce an explicit and mandatory constitutional provision dealing primarily with questions of form and process." *Id.* at 1110.

42. Here, each allegation in the Complaint is of sufficient weight to warrant alternative standing because the restrictions placed on legislative activity by Art. V, § 1 (Separation of Powers), Art. I, § 23 (Franchises Forbidden), Art. I, § 11 (Open Courts Clause), and Art. VIII, § 1 (Judicial Function) are also part of the fundamental structure of legislative power articulated in the Utah Constitution. In other words, H.B. 249 violates restrictions that "must be observed every time the legislature exercises its core function of passing laws." *Id.* at 1111.

43. The Supreme Court rejected the Appellants' two remaining claims (Article X claims) because the "provision at issue in the Article X claims . . . [wa]s a delegation of a defined subject to a particular agency." *Id.* at 1111. In other words, while "the restrictions on the legislative process imposed by Article [V]I Section 22 give every citizen of Utah an interest in seeing them obeyed, the delegation in Article X, Section 3 of 'general control and supervision of the public education system' to the Board does not create such a general interest." *Id.* Put differently, "the Appellant's lack of 'appropriateness' to treat" the Article X claims' coupled with their "localized significance[,] render[ed] the public-interest standing doctrine inapplicable."

44. Here, unlike the Article X claims in *Gregory*, the Complaint's claims are manifestly not of the "more localized significance" variety. *Id.* They go to the structural heart of Utah's three distinct branches of government. Every citizen in Utah has an interest in ensuring the integrity of the three distinct branches of government.

45. For example,"[t]he separation of powers represents, probably, the most important principle of government declaring and guaranteeing the liberties of the people, and has been so considered, at least, since the famous declaration of Montesquieu that 'there can be no liberty if the power of judging be not separated from the legislative and executive powers.'" *Matheson v. Ferry*, 641 P.2d 674, 682 (Utah 1982) (Howe, J., concurring) (cleaned up) (citation omitted); *see*

also Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 147 (1948) ("To say that the legislature may [violate Art. I, § 23 and] pass irrepealable laws, is to say that it may alter the very constitution from which it derives its authority."); *Tindley v. Salt Lake City Sch. Dist.*, 116 P.3d 295, 299 (Utah 2005), *holding modified on other grounds by Moss v. Pete Suazo Utah Athletic Comm'n*, 175 P.3d 1042 (Utah 2007) ("In other words, the open courts clause provides more than procedural protections; it also secures substantive rights, thereby restricting the legislature's ability to abrogate remedies provided by law."); *Tite v. State Tax Comm'n,* 89 Utah 404 (1936) ("The judicial function grew primarily from the necessity of deciding controversies which involved the function of construing laws.").

46. Accordingly, the alleged constitutional violations in this Complaint are undoubtedly of sufficient weight (i.e., public importance) in and of themselves to warrant granting the NhRP alternative standing. To rule otherwise and allow H.B. 249 to go unchallenged would mean a categorical rejection of the "mandatory and prohibitory" requirements outlined in the Utah Constitution. Utah Const. art. I, § 26.

47. Finally, since the Utah Legislature and the Utah Executive Branch have already addressed H.B. 249 by passing the bill into law this Court is the most appropriate branch of government to address H.B. 249's constitutionality. *Stanton v. Stanton*, 30 Utah 2d 315, 317 (1974), *rev'd on other grounds in*, 421 U.S. 7 (1975) (The judiciary has the "responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law.").

48. The NhRP has alternative standing to litigate this matter because (1) it is an appropriate party, (2) the constitutional violations cited herein are issues of sufficient public importance, and (3) this Court is the most appropriate branch of government to address this case.

FACTUAL BACKGROUND

49. Introduced by Rep. Brooks and sponsored by Sen. Don Ipson, H.B. 249 was signed into law by Gov. Cox on March 21, 2024, and took effect on May 1, 2024.

50. The legislation prohibits "a governmental entity" from granting "legal personhood to, []or recogniz[ing] legal personhood in," the following nonhuman entities:

> (1) artificial intelligence; (2) an inanimate object; (3) a body of water; (4) land; (5) real property; (6) atmospheric gases; (7) an astronomical object; (8) weather; (9) a plant; (10) a nonhuman animal; or (11) any other member of a taxonomic domain that is not a human being.

Ex. A.

51. Governmental entity is defined as "(a) a court; (b) the Legislature; (c) the legislative body of a political subdivision; or (d) another entity of the state or a political subdivision, if the entity has adjudicatory or rulemaking authority." *Id.*

52. In effect, H.B. 249 prohibits the Utah judiciary and any Utah legislative assembly from ever granting any legal right to any entity in Utah that is not a member of the species *Homo sapiens*.

LEGAL BACKGROUND

53. "A statute may be unconstitutional either on its face or as applied to the facts of a given case." *State v. Herrera*, 993 P.2d 854, 957 n.2 (Utah 1999). "[I]n a facial challenge to a statute . . . we will only overturn the will of the legislature when 'the statute is so constitutionally flawed that no set of circumstances exists under which the [statute] would be valid.'" *Vega v. Jordan Valley Med. Ctr., LP,* 449 P.3d 31, 35 (2019) (citation omitted). No set of circumstances exists under which H.B. 249 is valid.

54. "Legal personhood, or legal personality, is a foundational concept of Western law. Legal persons are most often understood as those beings that hold rights and/or duties, or at least

have the capacity to hold rights, under some legal system." Visa A.J. Kurki, *Legal Personhood, in* ELEMENTS IN PHILOSOPHY OF LAW 1 (Cambridge University Press, 2023). In other words, "[t]o confer legal rights or to impose legal duties, therefore, is to confer legal personality." Bryant Smith, *Legal Personality* 27:3 YALE L.J. 283, 283 (1928); *see also* F. H. Lawson, *The Creative Use of Legal Concepts*, 32 N.Y.U. L. REV. 909, 915 (1957) ("All that is necessary for the existence of a person is that the lawmaker, be he legislator, judge, or jurist, or even the public at large, should decide to treat it as a subject of rights or other legal relations.").

55. The conferral of legal personhood to a wide-ranging catalog of entities, including nonhuman entities, has been within the purview of English-speaking judiciaries for hundreds of years. *See, e.g.*, *Tucker v. Alexandroff*, 183 U.S. 424, 438 (1902) ("A ship is born when she is launched . . . . She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name.").[5]

56. By restricting who (or what) is entitled to legal personhood, the Utah legislature has effectively removed the Utah judiciary's common law decision-making powers. This it cannot do.

CLAIMS FOR RELIEF

First Cause of Action

Violation of the Separation of Powers Clause Under Art. V, §1 of the Utah Constitution

57. The NhRP restates and reincorporates paragraphs 1-56.

[5] *See also* OLIVER WENDELL HOLMES, THE COMMON LAW 29 (1881) ("[T]hose great judges, although of course aware that a ship is no more alive than a mill-wheel, thought that not only the law did in fact deal with it as if it were alive, but that it was reasonable that the law should do so.").

58. Utah Const. art. V, § 1, mandates that "[t]he powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted."

59. The Separation of Powers Clause is, "offended when there is an attempt by one branch [of government] to dominate another in that other's proper sphere of action." *In re Young*, 976 P.2d 581, 590 (1999). "Moreover, by requiring the separation of powers among the branches of government, except as otherwise provided in the Constitution itself, Article V, section 1 preserves the sanctity of the judiciary and helps to ensure that the rule of law, and not political partisanship or transient majoritarian preferences, shall govern in our courts." *Id.* at 602 (Stewart, J., dissenting). "The legislative and executive branches, both of which are staffed through popular elections, are naturally attuned to the volatile opinions of voters, evolving moral standards, and shifting economic forces. Adherence to the impartial rule of law, so crucial to our system of government, can prevail only if the judiciary is able to apply the rule of law free from partisan influence." *Id.*

60 . In *Salt Lake City v. Ohms*, 881 P.2d 844, 852 (1994), the statute at issue was found unconstitutional because the Utah Legislature granted court commissioners, "authority to enter final judgment and impose sentence[s]." The Court found the "very attempt by the legislature to designate an individual other than a duly appointed judge to wield ultimate judicial power is, in and of itself, a violation of the separation of powers doctrine." *Id.* at 852.

61. H.B. 249 prohibits any court in the state of Utah from exercising its common law authority to confer legal personhood to, or recognize legal personhood in, anything not

scientifically classified as a member of the genus *Homo*. This violates the separation of powers provision of the Utah constitution because (1) it is an attempt by the legislature to dominate the judiciary in its proper application of the common law, and (2) it seeks to designate the 2024 Utah Legislature as the emissary of ultimate judicial power now and forever. This means that Utah judges, including judges of subsequent generations—who will rule decades from now in a context none of us can foretell or imagine—will be bound entirely by what the 2024 Utah Legislature has done in passing this bill.

62. The Utah Supreme Court has "articulated a three-part test for analyzing whether a law violates separation of powers principles." *W. Jordan City v. Goodman*, 135 P.3d 874, 881 (2006). It asks:

> First, are the legislators in question "charged with the exercise of powers properly belonging to" one of the three branches of government? Second, is the function that the statute has given the legislators one "appertaining to" another branch of government? The third and final step in the analysis asks: if the answer to both of the above questions is "yes," does the constitution "expressly" direct or permit exercise of the otherwise forbidden function?

In re Young, 976 P.2d at 584. "In defining the functions or powers which are [appertaining] to one department, we have also used the terms 'primary,' 'core,' or 'essential.'" *Id.* at 586.

63. First, yes, the Utah Legislature is charged with the exercise of powers properly belonging to one of the three branches of government. *Id.* ("There was no question then, and there is no question today, that the answer to the first question is 'yes.' Legislators alone are charged with the exercise of the essential powers inherent in the very concept of the legislative branch–the power to vote on proposed laws.").

64. Second, yes, H.B. 249 has given the legislature the power to restrict the conferral of legal rights through the courts, which is a core function appertaining to the judiciary. *Matter of Childers-Gray*, 487 P.3d 96, 115 (2021) ("The common law is 'a subject lodged firmly within the

court's sphere.' 'It is the responsibility of the judiciary to examine those causes of action which it has created, to alter them when appropriate, and to abolish them when necessary. The basic evolutionary provisions of the common law have not been repealed.'") (citations omitted).

65. Third, no, the Utah Constitution contains no express provision directing or permitting today's legislative assembly the forbidden function of eternal adjudication of common law cases. *See, e.g., Carter v. Lehi City*, 269 P.3d 141, 152 (Utah 2012) ("One abuse that was prevalent during the Confederation was the exercise of judicial power by the state legislatures. . . . It was to prevent the recurrence of such abuses that the Framers vested the executive, legislative, and judicial powers in separate branches.").

66. The conferral of common law rights is an "essential, core, [and] inherent" function of a common law court. *In re Young*, 976 P.2d at 591. *See Cast v. Cast*, 1 Utah 112, 122 (1873) ("In the United States courts, Common Law embraces 'all those proceedings in which legal rights are to be ascertained and determined, whether they be the old, long settled proceedings of the Common Law or new legal remedies, different, it may be, from the old Common Law forms.'") (citation omitted).

67. By mandating how a common law court in Utah must rule when the question of legal personhood is before it (regardless of context), the legislature has violated the separation of powers provision in Art. V, § 1 of the Utah Constitution.

Second Cause of Action

Violation of the Franchises Forbidden Clause Under Art. I, § 23 of the Utah Constitution

68. The NhRP restates and reincorporates paragraphs 1-67.

69. The Utah Constitution is explicit: "No law shall be passed granting irrevocably any franchise, privilege or immunity." Utah Const. Art. 1, § 23.

70. Hon. Roger I. McDonough, a former Chief Justice of the Utah Supreme Court, understood the importance of this constitutional prohibition:

> To say that the legislature may pass irrepealable laws, is to say that it may alter the very constitution from which it derives its authority; since, insofar as one legislature could bind a subsequent one by its enactments, it could in the same degree reduce the legislative power of its successors; and the process might be repeated, until, one by one, the subjects of legislation would be excluded altogether from their control, and the constitutional provision that the legislative power shall be vested in two houses would be to a greater or less degree rendered ineffectual.

Thomas, 114 Utah at 147 (McDonough, C.J., concurring) (internal quotations and citation omitted). "Irrepealable and irrevocable are synonymous." *Id.* at 148.

71. In *Thomas*, Hon. McDonough was asked to determine the constitutionality of the Utah Legislature's "[99-year] lease of the land . . . to a private corporation." *Id.* at 148. Contained within the lease was the specified public purpose that the Pioneer Memorial Building would be constructed to display historical relics. *Id.* at 114.

72. Based on his foregoing language, Hon. McDonough concluded that "if the grant here be so construed as to preclude future legislatures from determining whether the public purposes for which the grant is made is being properly carried out, it is violative of the constitution." *Id.* at 149.

73. "It is, in fact, one of the important functions of the Legislature to change and modify the law that governs relations between individuals as society evolves and conditions require." *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah 1985). H.B. 249 precludes future legislatures from determining whether a nonhuman entity can be granted a legal right no matter how far society has progressed.

74. H.B. 249 mandates that legal personhood is off the proverbial table for all time, no matter the fact that we already live in a society where human/nonhuman animal hybrids exist (thus

disrupting the supposedly special category the bill purports to protect),[6] the rights of nature movement is creating lasting benefits for at-risk ecosystems,[7] and artificial general intelligence is potentially only decades away, if that.[8] If H.B. 249 stands, one of the Legislature's most important functions will fall; even if society continues to evolve, Utah's laws will not.

75. There might not be a cleaner example of legislation that violates Utah Const. art. I, § 23.

Third Cause of Action

Violation of the Open Courts Clause Under Art. I, § 11 of the Utah Constitution

76. The NhRP restates and reincorporates paragraphs 1-75.

77. Article I, section 11 of the Utah Constitution states:

> All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

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[6] *See, e.g.,* Josephine Johnston et al*., Clarifying the Ethics and Oversight of Chimeric Research*, 52 HASTINGS CENT. REP. Suppl. 2, 1 (2023) ("For decades, researchers have inserted different types of human cells into nonhuman animals at various stages of development.").

[7] *See, e.g.,* Katie Surma, *Utah Supports "Personhood" for Corporations but Maybe Not Forests*, MOTHER JONES (Feb. 4, 2024), available at: https://shorturl.at/krKU4 ("Ecuador's Constitutional Court has ruled that the law requires mining companies to carry out detailed scientific studies in ecologically sensitive areas before being allowed to operate, and that wild animals possess distinct legal rights, including to exist, to develop their innate instincts and to be free from disproportionate cruelty, fear and distress.").

[8] *See, e.g.,* Max Roser, *AI timelines: What do experts in artificial intelligence expect for the future?* OUR WORLD IN DATA (Feb. 7, 2023), available at: https://shorturl.at/howL3 ("Many AI experts believe there is a real chance that human-level artificial intelligence will be developed within the next decades, and some believe that it will exist much sooner."); *see also Utah Is the State Most Likely to Use Artificial Intelligence*, VISION MONDAY (April 17, 2023), available at: https://shorturl.at/di567 ("The results found Utah is the state most likely to use AI.").

78. "Article I, section 11 of the Utah Constitution is part of the Declaration of Rights. It declares that an individual shall have a right to 'remedy by due course of law' for injury to 'person, property, or reputation.'" *Berry*, 717 P.2d at 674. "The clear language of the section guarantees access to the courts and a judicial procedure that is based on fairness and equality." *Id.* at 675. "A constitutional guarantee of access to the courthouse was not intended by the founders to be an empty gesture." *Id.*

79. "In *Berry*, this court announced a three-part test to determine whether legislation violates the Open Courts Clause." *Rutherford v. Talisker Canyons Fin., Co.*, LLC, 445 P.3d 474, 491-92 (Utah 2019). The test is as follows:

> First, we look to see whether the legislature has abrogated a cause of action. If the legislature has abrogated a cause of action, we then determine whether the law provides an injured person an effective and reasonable alternative remedy. And finally, if there is no alternative remedy, we look to see if there is a clear social or economic evil to be eliminated and if the elimination of an existing legal remedy is not an arbitrary or unreasonable means for eliminating such evil. If no clear social or economic evil is being eliminated, then the legislative act runs afoul of the Open Courts Clause.

Id. (cleaned up) (internal quotations and citations omitted).

80. H.B. 249 satisfies all three prongs of the *Berry* test thus violating Article I, section 11 of the Utah Constitution.

81. Specifically, by enacting H.B. 249, the Utah Legislature has eliminated all causes of action for the enforcement of pet trusts. Under Utah Code Ann. § 75-2-1001, "designated domestic or pet animal[s]" are the beneficiaries of fully enforceable trusts with the statutory right to the trust corpus. *Id.* ("trust for the care of a designated domestic or pet animal is valid"); *id.* at (3)(a) ("no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal").

82. The conferral of this single statutory right to the trust corpus makes the nonhuman animal beneficiaries legal persons.

83. Trust beneficiaries are necessarily legal persons. *Beneficiary*, BLACK'S LAW DICTIONARY (11th ed.) ("beneficiary" is "[a] person to whom another is in a fiduciary relation . . . esp., a person for whose benefit property is held in trust"); *see also Person*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not.") (emphasis added).

84. Accordingly, under the pet trust statute, nonhuman animal beneficiaries have a cause of action if the wills created on their behalf are not properly enforced. By restricting legal personhood to *Homo sapiens*, the Utah Legislature has abrogated causes of action arising from improperly enforced pet trusts and has not provided an alternative remedy. Since caring for domestic or pet nonhuman animals is neither an economic nor social evil, there is no positive argument for eliminating the enforcement of trusts for pets. As a result, H.B. 249 cannot overcome the *Berry* test and violates the Open Courts Clause of the Utah Constitution. *See also Mitchell v. Roberts*, 469 P.3d 901, 909 (2020) ("the due process guarantee has long been understood as a limitation on the legislative power—a prohibition of legislative acts that retrospectively divest a person of vested rights lawfully acquired under pre-existing law").

85. Accordingly, the Utah Legislature has effectively eliminated causes of action seeking to enforce the pet trust statute. *Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.*, 782 P.2d 188, 191 (1989) ("If the legislature abrogates one remedy, it must create another."); *id.* ("when the legislature removes a particular right or remedy, it cannot simply rely on other preexisting rights or remedies to fill the void left behind, but must rather provide a quid

pro quo in the form of either a substitute remedy for the individual or the removal of a perceived social or economic evil for society").

86. H.B. 249 does not contemplate alternative remedies for this abrogation and there is no clear social or economic evil to be eliminated by the legislation. H.B. 249 thus decidedly runs afoul of the Open Courts Clause of the Utah Constitution. *See Berry*, 717 P.2d at 676 ("If the legislative prerogative were always paramount, and the Legislature could abolish any or all remedies for injuries done to a person, his property, or reputation, section 11 would be a useless appendage to the Constitution.").

Fourth Cause of Action

Violation of the Judicial Function Clause Under Art. VIII, §1 of the Utah Constitution

87. The NhRP restates and reincorporates paragraphs 1-86.

88. Utah Const. art. VIII, § 1, states: "The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish."

89. This simply means that the Utah Constitution "vests judicial power in the courts under Article VIII, section I [and] [t]his judicial power cannot be abrogated or eliminated by statute." *Vega*, 449 P.3d at 39.

90. In *Vega*, 449 P.3d at 33, "an otherwise healthy forty-four-year-old male, went in for a routine gallbladder operation and came out in a coma. He died a week later." The decedent's wife, Ms. Vega, brought a medical malpractice action against the medical center and all related medical providers who were involved in her husband's care. *Id.*

91. The district court dismissed Ms. Vega's action because "she failed to obtain a certificate of compliance from the Division of Occupational and Professional Licensing (DOPL)."

Id. According to amendments to the Malpractice Act of the time, without a certificate of compliance from DOPL, a malpractice action was required to be dismissed by the court. *Id.* at 34.

92. In analyzing whether it was constitutional to "require a plaintiff to obtain a certificate of compliance prior to filing a lawsuit in the district court," *id.* at 35, the Supreme Court of Utah recognized that "the core judicial power vested in the courts by Article VIII is always retained by the judiciary—regardless of whether the party attempting to exercise a core judicial function belong to another branch of government." *Id.* at 36.

93. In other words, "it is unconstitutional for anyone but 'duly appointed judges' subject to 'constitutional checks and balances' to adjudicate cases and enter final judgment." *Id.* For that reason, the Court found that "the Malpractice Act, which require[s] dismissal of an action absent a certificate of compliance from DOPL, exceeded any offer of mere assistance to the courts and instead ultimately represent[ed] an exercise of core judicial functions," *id.*, because the mandatory certificate of compliance "function[s] to give DOPL the power to finally dispose of claims at the direct expense of the judiciary." *Id.* at 37.

94. In other words, if there is "no review or appeal to the courts" from DOPL's determination that a potential malpractice action does not have merit, "it is an authoritative and final ruling on whether a claim has merit. It is a total disposition of a case, outside of the courts, without any standard judicial process or consent of the parties." *Id.* at 38. DOPL "heard Ms. Vega's case and made a determination. And it did so—by design—in complete isolation from the courts, the proper wellspring of the judicial power." *Id.*

95. The Court held that the Utah Code Sections amending the Malpractice Act to require a certificate of compliance before initiating a lawsuit in the district court were "facially unconstitutional." *Id.* at 39.

96. H.B. 249 is facially unconstitutional because it also permits a third party (here, the 2024 Utah Legislature) to finally dispose of cases at the direct expense of the judiciary.

97. By allowing the legislation to stand, courts in Utah will no longer be able to adjudicate common law cases and enter final judgment for parties seeking legal rights for various nonhuman entities.

98. Furthermore, courts in Utah will no longer be able to adjudicate cases that seek to enforce a domestic or pet nonhuman animal's right to the corpus of a trust. These examples (of which there are likely more) are total dispositions of cases, outside of the courts, without any standard judicial process. Such efforts by the Utah Legislature are manifestly unconstitutional:

> Implicit in the vesting of judicial power in Article VIII judges is a prohibition against any attempt to vest such power elsewhere. Just as a legislator could not authorize someone else to sit in his or her place and vote on legislation, neither can a judge appoint another person to sit in his or her place and conduct trials, make final orders and judgments, or otherwise exercise ultimate judicial power. Such constitutional judicial powers cannot be delegated. Such judicial powers can be exercised only by those who have been appointed pursuant to the requirements and safeguards set forth in the Utah Constitution.

Holm v. Smilowitz, 840 P.2d 157, 166 (Utah Ct. App. 1992).

99. Constitutionally, the Utah Legislature cannot determine the outcome of causes of action arising under the common law or pet trust statute by vesting judicial power in itself through H.B. 249 and barring those causes of action from judicial review. *See In re Handley's Est.*, 15 Utah 212 (1897) ("If we were to affirm the validity of the law in question, we would, in effect, say that the legislature may exercise judicial powers, authorize and require the courts to set aside final judgments and decrees, devest titles, and destroy and annihilate vested rights.").

100. The Utah Legislature cannot abrogate or eliminate the judicial power conferred onto the courts through Article VIII, section 1 of the Utah Constitution. As it has tried to do this

through the enactment of H.B. 249, the legislation is facially unconstitutional and must be struck down in its entirety.

RELIEF SOUGHT

Therefore, the NhRP respectfully requests that this Court:

1. Grant declaratory relief, pursuant to Utah Code Ann. § 78B-6-401, specifying that H.B. 249 is unconstitutional on its face in its entirety and therefore invalid;
2. Award Plaintiffs their reasonable attorneys' fees and costs;
3. Grant such other and further relief as the Court deems just, equitable, and proper.

DATED: Salt Lake City, Utah, Jan. 29, 2025

Respectfully submitted,

/s/ Joel Ban
Joel Ban
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(801) 289-6353

Exhibit A

UTAH LEGAL PERSONHOOD AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill addresses legal personhood.

Highlighted Provisions:

This bill:

- defines terms; and
- prohibits a governmental entity from granting or recognizing legal personhood in certain categories of nonhumans.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63G-31-101, Utah Code Annotated 1953

63G-31-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-31-101** is enacted to read:

CHAPTER 31. LEGAL PERSONHOOD

63G-31-101 . Definitions.

As used in this chapter:

(1) "Body of water" means any natural or man-made accumulation of water, regardless of whether the accumulation of water is static or subject to a force that causes a hydrological current.

(2) "Governmental entity" means:

(a) a court;

(b) the Legislature;

(c) the legislative body of a political subdivision; or

(d) another entity of the state or a political subdivision, if the entity has adjudicatory or rulemaking authority.

(3) "Human being" means a member of the species classified as Homo sapiens;

(4) "Land" means the solid terrestrial surface or subsurface of the earth.

(5) "Legal personhood" means:

(a) the legal rights and obligations of an individual under the laws of this state; or

(b) the legal rights and obligations of a person other than an individual under the laws of this state.

(6) "Political subdivision" means the same as that term is defined in Section 63G-7-102.

(7) "Real property" means any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

(8) "State" means the same as that term is defined in Section 63G-7-102.

Section 2. Section **63G-31-102** is enacted to read:

63G-31-102 . Legal personhood restricted.

Notwithstanding any other provision of law, a governmental entity may not grant legal personhood to, nor recognize legal personhood in:

(1) artificial intelligence;

(2) an inanimate object;

(3) a body of water;

(4) land;

(5) real property;

(6) atmospheric gases;

(7) an astronomical object;

(8) weather;

(9) a plant;

(10) a nonhuman animal; or

(11) any other member of a taxonomic domain that is not a human being.

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.

Exhibit B

NONHUMAN RIGHTS PROJECT

July 31, 2024

Sean D. Reyes
Office of the Attorney General
Utah State Capitol Complex
350 North State Street, Suite 230
SLC, UT 84114-2320
1-801-366-0260
uag@agutah.gov

RE: NOTICE OF CLAIM AGAINST THE STATE OF UTAH

Dear Mr. Reyes:

Per Utah Code Ann. ("UCA") § 63G-7-401 et seq. and *id.* at (3)(b)(ii)(E), the Nonhuman Rights Project, Inc., ("NhRP"), by and through the undersigned counsel, sends this notice of claim ("Notice") to you via electronic mail because this claim is against the State of Utah.

Per UCA § 63G-7-401(3)(a), the Notice sets forth the following:

(i) On March 21, 2024, Utah House Bill 249, Gen. Sess. (2024) (codified as UCA § 63G-31-101) ("H.B. 249"), was signed into law by Governor Spencer Cox and took effect on May 1, 2024. The law prohibits a governmental entity from conferring the status of legal "person" (i.e., legal personhood) onto an enumerated list of nonhuman entities. H.B. 249 defines "governmental entity" as a court, the legislature, the legislative body of a political subdivision, and another entity of the state or a political subdivision if the entity has adjudicatory or rulemaking authority. A true and correct copy of H.B. 249 is attached hereto as Exhibit A.

(ii) H.B. 249 is facially unconstitutional in its entirety and will be challenged accordingly. It violates the following provisions of the Utah Constitution: Art. V, § 1 (Separation of Powers), Art. I, § 23 (Franchises Forbidden), Art. I, § 11 (Open Courts Clause), and Art. VIII, § 1 (Judicial Function).

(iii) The NhRP has incurred damages in an amount currently unknown and to be determined in court.

/s/ Joel Ban
Joel Ban
Ban Law Office PC
PO Box 118
Salt Lake City, UT 844110
joel@banlawoffice.com
Bar No. 10114 (UT)

/s/ Jake Davis
Jake Davis*
Nonhuman Rights Project, Inc.
611 Pennsylvania Ave SE #345
Washington, DC 20003
jdavis@nonhumanrights.org
Bar No. 54032 (CO)
**Pro hac vice applicant*

EXHIBIT C

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL

SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Daniel Burton
General Counsel

Ric Cantrell
Chief of Staff

Stanford E. Purser
Solicitor General

Brian L. Tarbet
Chief Civil Deputy

August 16, 2024

Via Electronic Mail

Joel Ban
Ban Law Office PC
Post Office Box 118
Salt Lake City, UT 84110
joel@banlawoffice.com

Jake Davis
Nonhuman Rights Project, Inc.
611 Pennsylvania Ave. SE, #345
Washington, DC 20003
jdavis@nonhumanrights.org

Re: Notice of Claim

Dear Mr. Ban and Mr. Davis:

We received your notice of claim submitted on behalf of the Nonhuman Rights Project, Inc. Please be aware that a notice of claim directed toward the State of Utah that is served solely by electronic mail, must be emailed to both noticeofclaim@agutah.gov and sreyes@agutah.gov. See Utah Code § 63G-7-401(3)(d). This letter does not constitute a waiver of any of the provisions or requirements of the Governmental Immunity Act of Utah, Utah Code § 63G-7-101 to -904, nor does it confirm or verify the sufficiency of the notice of claim as required by the Act.

Sincerely,

STEVEN A. COMBE
Assistant Utah Attorney General
Deputy Director, Litigation Division

Exhibit D

Jake Davis <jdavis@nonhumanrights.org>

notice of claim

Joel Ban <joel@banlawoffice.com> Fri, Aug 16, 2024 at 2:22 PM
To: "noticeofclaim@agutah.gov" <noticeofclaim@agutah.gov>, "sreyes@agutah.gov" <sreyes@agutah.gov>
Cc: Jake Davis <jdavis@nonhumanrights.org>

thanks

(UT) Notice of Claim.pdf
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