STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant,

Supreme Court No. 169351

v

Court of Appeals No. 369247

DEYOUNG FAMILY ZOO, LLC and

Menominee Circuit Court
LC No. 23-17621-AH

HAROLD L. DEYOUNG,

Defendants-Appellees.

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Motion for Leave to File Attached Proposed Amicus Curiae Brief in Support of Plaintiff-Appellant's Application for Leave to Appeal

Attorney for Proposed Amici, Shannon Minter, Esq. and Evan Wolfson, Esq., states as follows in support of their request for leave to file the attached proposed amicus curiae brief in support of Plaintiff-Appellant's Application for Leave to Appeal, pursuant to MCR 7.305(F):

1. Shannon Minter is the Legal Director of the National Center for Lesbian Rights. He was lead counsel for same-sex couples in *In re Marriage Cases*, 43 Cal. 4th 757 (2008), and co-counsel in *Obergefell v. Hodges*, 576 U.S. 644 (2015), and *Pavan v. Smith*, 582 U.S. 563 (2017).

2. Evan Wolfson founded and led Freedom to Marry, the campaign that won marriage equality in the United States. He is widely considered the architect of the global marriage equality movement.

3. Proposed Amici have extensive experience litigating cases that required courts to reexamine longstanding assumptions about who is entitled to legal protection. Amici have previously filed amicus briefs making related arguments in *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (2022), before the New York Court of Appeals, and in *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society*, 562 P.3d 63 (Colo. 2025), before the Colorado Supreme Court. The Michigan Court of Appeals cited those decisions approvingly in the opinion below.

4. Proposed Amici's brief identifies a structural flaw in the Court of Appeals' reasoning—the same analytical error the United States Supreme Court identified and corrected in *Lawrence v. Texas*, 539 U.S. 558 (2003)—that amici's experience in civil rights litigation is particularly suited to address.

5. Accordingly, Proposed Amici respectfully request that this honorable Court grant their Motion for Leave to File Attached Proposed Amicus Curiae Brief, a copy of which is included in this filing.

Respectfully submitted,

Date: February 12, 2026

/s/ *Anne Argiroff*

Anne Argiroff, P37150
Attorney for Proposed Amici Curiae

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PROPOSED BRIEF OF AMICI CURIAE SHANNON MINTER AND EVAN WOLFSON IN SUPPORT OF PLAINTIFF-APPELLANT

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici Shannon Minter, Esq. and Evan Wolfson, Esq. respectfully submit this brief, through Michigan counsel, pursuant to MCR 7.305(H).[1] Amici are attorneys who have spent their careers litigating for lesbian, gay, bisexual, and transgender (LGBT) rights, including in cases that required courts to reexamine longstanding assumptions about who is entitled to legal protection.

Shannon Minter is the Legal Director of the National Center for Lesbian Rights (NCLR), one of the nation's leading advocacy organizations for lesbian, gay, bisexual, and transgender people. Minter was lead counsel for same-sex couples in *In re Marriage Cases*, 43 Cal. 4th 757 (2008), which held that same-sex couples have the fundamental right to marry and that laws discriminating based on sexual orientation are subject to strict scrutiny. Minter was co-counsel in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010), upholding nondiscrimination policies protecting sexual orientation and gender identity; *Obergefell v. Hodges*, 576 U.S. 644 (2015), recognizing the constitutional right of same-sex couples to marry nationwide; and *Pavan v. Smith*, 582 U.S. 563 (2017), holding that states must treat same-sex and opposite-sex couples equally on birth certificates.

Evan Wolfson founded and led Freedom to Marry, the campaign that won marriage equality for same-sex couples in the United States. He is widely considered the architect of the marriage equality movement. In 1983, Wolfson wrote his Harvard Law School thesis on gay people and the freedom to marry. During the 1990s, he served as co-counsel in the historic Hawaii marriage case, *Baehr v. Miike*, 910 P.2d 112 (1996), that launched the ongoing global movement for marriage equality, which has led to the freedom to marry for same-sex couples in 39 countries covering more than 1.4 billion people worldwide (up from zero when he started).

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to fund the preparation or submission of this brief.

Amici have previously filed amicus briefs making related arguments in *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (2022), before the New York Court of Appeals, and in *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society*, 562 P.3d 63 (Colo. 2025), before the Colorado Supreme Court. The Michigan Court of Appeals cited those decisions approvingly in the opinion below. Amici submit this brief to offer this Court the perspective of advocates who have litigated cases requiring courts to look beyond reflexive or overly cramped assumptions about who is entitled to invoke the law's protections.

Amici's experience in civil rights litigation has taught them to recognize a recurring pattern in how courts sometimes initially respond to novel claims: unduly allowing the perceived novelty of the claimant's identity to foreclose serious examination of the substance of the claim. That analytical error—which the United States Supreme Court itself acknowledged and corrected in *Lawrence v. Texas*, 539 U.S. 558 (2003)—is the same error at work in the decision below.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Mich. Const. 1963, art. 6, § 4; MCL 600.215; and MCR 7.303(B). Amici adopt the jurisdictional statement of Plaintiff-Appellant.

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in holding that chimpanzees are categorically ineligible for habeas corpus relief under Michigan's Constitution and common law, based solely on the species of the petitioners rather than the nature of the liberty interest asserted.

The Court of Appeals answered: Yes, chimpanzees are categorically ineligible.

Amici's answer: The court erred by asking the wrong question.

II. Whether the "social compact" theory—under which habeas relief is limited to beings capable of assuming legal obligations—provides a sound basis for denying relief to cognitively complex nonhuman animals.

The Court of Appeals answered: Yes.

Amici's answer: No. The theory is inconsistent with established habeas practice, and the values that habeas is intended to serve, and does not withstand scrutiny.

STATEMENT OF FACTS

Amici adopt the Statement of Facts set forth in Plaintiff-Appellant's brief and add the following observations relevant to the perspective amici bring to this case.

The Nonhuman Rights Project filed a 109-page complaint in Menominee Circuit Court seeking a writ of habeas corpus on behalf of seven chimpanzees kept at the DeYoung Family Zoo, a private "roadside" zoo in Wallace, Michigan. The complaint alleged that the chimpanzees are denied conditions proper to their species, including sufficient social interaction and year-round outdoor space, and detailed their "numerous cognitively complex abilities." The circuit court summarily denied the petition without holding a hearing, and the Court of Appeals affirmed.

ARGUMENT

The Court of Appeals' opinion is thorough and carefully reasoned in many respects. Its resolution of the jurisdictional question—holding that denial of habeas is appealable as of right—reflects commendable engagement with a genuinely difficult procedural issue. On the merits, however, the court's analysis suffers from a fundamental flaw: the court defined the question in a way that predetermined its answer.

The Court of Appeals held that chimpanzees are not "persons" eligible for habeas corpus relief because, at common law, "the category of 'persons' was confined to human beings" and "the law separately addressed the status of animals" as property. Decision, p. 10 (Exhibit A of Plaintiff-Appellant's Appendix) (hereinafter "Decision"). The court relied on Blackstone's division of legal persons into "natural" and "artificial," the "social compact theory," and the uniform rejection of similar claims by courts in New York, Colorado, and Connecticut. It further found that neither the trial court nor the Court of Appeals had authority to change the common law to recognize a new category of habeas-eligible beings.

Amici respectfully urge this Court to reverse. Amici offer four arguments: First, the Court of Appeals committed the same analytical error the U.S. Supreme Court identified and corrected in *Lawrence v. Texas*—focusing on the identity of the claimant rather than the nature of the interest asserted. Second, the "social compact" rationale does not bear the weight the court placed on it. Third, this Court, as the "principal steward of Michigan's common law," *Henry v. Dow Chemical Co.*, 473 Mich 63, 83 (2005), has both the authority and the obligation to adapt the common law in light of new knowledge. Fourth, the legal landscape is already evolving beyond the rigid person/property binary on which the Court of Appeals relied.

I.

By Focusing on the Identity of the Petitioners Rather Than the Nature of the Liberty Interest at Stake, the Court of Appeals Repeated the Analytical Error Identified and Corrected in *Lawrence v. Texas*

The Court of Appeals framed the central question as "who qualifies as a 'person' capable of being 'imprisoned' for purposes of habeas corpus." Decision at 10. That framing predetermined the outcome. By asking whether chimpanzees fit within the existing category of "persons," the court avoided the more fundamental question: whether cognitively complex, self-aware beings who demonstrably experience suffering from confinement have a liberty interest that the writ of habeas corpus—the Great Writ, the most flexible and far-reaching remedy in our legal tradition—is capacious enough to protect.

This analytical move is strikingly similar to the one the U.S. Supreme Court identified and corrected when it reversed *Bowers v. Hardwick*, 478 U.S. 186 (1986), in *Lawrence v. Texas*, 539 U.S. 558 (2003). Our comparison here (based on our decades of experience as advocates for vulnerable minorities) is not a substantive one—the issues in *Lawrence* and this case are different in obvious ways—but a structural one: the same flaw in reasoning recurs across very different areas of law whenever courts encounter claims they perceive as unprecedented.

In *Hardwick*, the Supreme Court was presented with a claim that laws criminalizing same-sex intimacy violated the fundamental right to privacy. Rather than examining whether gay people shared a protected interest in consensual intimate relationships—an inquiry that would have required substantive engagement with the claim—the Court dismissed the argument as "facetious."

478 U.S. at 194. It did so by defining the right narrowly ("whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy"), rather than asking the broader question of whether the Constitution protects a right to intimate association that encompasses all adults, which gay people thus should be entitled to share. *Id.* at 190. Having framed the question in terms of the identity of the claimant rather than the nature of the right, the Court found the answer self-evident.

Seventeen years later, the Court recognized this as a fundamental error. In *Lawrence*, Justice Kennedy explained that the flaw in *Hardwick* was precisely the way it framed the question:

> The Court began its substantive discussion in *Bowers* as follows: "The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time." That statement, we now conclude, discloses the Court's own failure to appreciate the extent of the liberty at stake. [539 U.S. at 566–67.]

The Court of Appeals committed the same structural error here. By framing the question as whether chimpanzees are "persons," the court made the novelty of that specific element—and the identity of the claimants—dispositive. As Justice Fahey of the New York Court of Appeals observed in his influential concurrence in *Matter of Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054, 1057 (2018):

> The better approach in my view is to ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. That question, one of tremendous importance and difficulty, deserves fuller consideration.

Justice Fahey continued: "Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention." *Id.* at 1058.

The *Lawrence* Court's analysis offers a further parallel. After recognizing that *Hardwick* had asked the wrong question, the Court did not simply answer the old question differently. It reframed the inquiry entirely, asking whether the challenged law "further[ed] a legitimate state interest which

can justify its intrusion into the personal and private life of the individual." 539 U.S. at 578. Similarly, this Court need not decide whether a chimpanzee is a "person" in the full sense that term carries across all areas of law. It need only decide whether the writ of habeas corpus—which the Michigan Constitution guarantees and which this Court has described as "fundamental to personal liberty," *Goetz v. Black*, 256 Mich 564, 567 (1932)—is broad enough to encompass the liberty interests of beings who demonstrably possess complex cognitive and emotional capacities.

The *Lawrence* Court also emphasized the danger of allowing past practice to define the limits of present rights. Noting that the principles protected by the Due Process Clauses "are deliberately broad," the Court explained that their drafters "knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." 539 U.S. at 578–79. The same is true of the common law writ of habeas corpus. As this Court has recognized, the writ's "sources in the common law go back to the earliest struggles for freedom." *Goetz*, 256 Mich at 567. Its scope and flexibility have always been among its defining features. As the U.S. Supreme Court has observed, "[t]he scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers." *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

The Court of Appeals also erroneously echoed *Hardwick*'s pattern of circular reasoning. In *Hardwick*, the Court reasoned that because same-sex intimacy had historically been criminalized, constitutional protection for such intimacy was unthinkable. Here, the Court of Appeals reasoned that because animals have historically been classified as property, they cannot possess liberty interests. But *rights are not defined by who has been denied them*. The fact that the law has not previously recognized a particular right for a particular class of beings is the beginning of the inquiry, not its conclusion. As the Supreme Court recognized in *Lawrence*, and later in *Obergefell v. Hodges*, 576 U.S. 644 (2015), the failure of past courts to recognize a right is often a reflection of the limitations of their era, not an authoritative determination that the right does not exist.

The Court of Appeals, like the New York Court of Appeals in *Breheny*, treated the history of slavery as evidence that the person/property binary has always been understood as inviolable. But

that history proves the opposite point. The category of "person" was not expanded to include enslaved people because courts finally got around to applying a fixed definition correctly. It was expanded because the legal system recognized that the prior narrow circular definition reflected a moral failure. The relevant question is not whether the person/property line has existed, but whether it continues to serve justice when applied to beings whose capacities we now understand far better than Blackstone did.

II.

The "Social Compact Theory" Does Not Justify Denying Habeas Relief to Cognitively Complex Nonhuman Animals.

The Court of Appeals placed significant weight on the "social compact theory" as a basis for distinguishing persons from animals. Drawing on Blackstone and Hobbes, the court reasoned that "[a] central aspect of personhood is mankind's capacity to 'give[] up a part of his natural liberty' and oblige[] himself to conform to those laws, which the community has thought proper to establish." Decision at 11. Because "[c]himpanzees—and nonhuman animals generally—are incapable of making this exchange," Decision at 13, the court concluded they fall outside the scope of habeas protection.

This reasoning has a surface plausibility, but the limitation does not withstand scrutiny. It suffers from three fundamental defects.

A. The social compact rationale is inconsistent with established habeas practice.

If the capacity to enter a social compact—to accept legal obligations and conform to the law—were truly the criterion for habeas eligibility, then infants, young children, persons with severe cognitive disabilities, and persons in irreversible comas would all be excluded from the writ's protection. No one contends that they are. The Court of Appeals did not address this difficulty, and the courts that have confronted it have responded only that such persons "are still human beings." *Matter of Nonhuman Rights Project, Inc. v. Lavery*, 152 A.D.3d 73, 78 (1st Dept. 2017). But that response simply substitutes species membership for the social compact rationale—which is to concede that the social compact theory is not actually a necessary element for deserving habeas protection.

If the real criterion is simply species membership—that habeas protects human beings *because they are human*, regardless of their capacity for rational agency—then the social compact theory is not doing the analytical work the court ascribed to it. And if species membership is the true criterion, this Court should examine whether that is a principled distinction or simply a restatement of the conclusion. Defining the scope of rights by the identity of the rights-holder, rather than by the nature of the interest at stake, is precisely the error *Lawrence* called out and corrected.

B. Blackstone's own account of habeas does not depend on the social compact.

The Court of Appeals relied heavily on Blackstone, but it conflated two distinct strands of Blackstone's thought. Blackstone described "natural liberty" and the social compact in Book I, in his general discussion of the rights of persons. But his discussion of habeas corpus appears in Book III, where he described it not as a remedy flowing from the social compact but as a remedy for *false imprisonment*—"the violation of the right of personal liberty." 3 Blackstone at *127. The writ was a practical remedy against unlawful confinement, not a philosophical corollary of social contract theory.

Blackstone explained that habeas addressed the "injury of false imprisonment, for which the law has . . . given a private reparation to the party; as well by removing the actual confinement for the present." *Id.* This language focuses on the *fact of confinement* and the *injury it causes*, not on whether the confined being has the capacity to enter a social compact or the identity of the claimant. To be sure, Blackstone assumed the confined being would be human—he was writing in an era when the question of nonhuman habeas did not arise. But the *rationale* he articulated—that confinement is an injury remediable by law—does not logically depend on species membership.

C. The "social compact theory," if taken seriously, proves too much.

The Court of Appeals quoted the New York Court of Appeals in *Breheny* for the proposition that "[u]nlike the human species, which has the capacity to accept social responsibilities and legal duties, nonhuman animals cannot—neither individually nor collectively—be held legally accountable or required to fulfill obligations imposed by law." 38 N.Y.3d at 572. And the court quoted Hobbes: "To make Covenant with bruit Beasts, is impossible; because not understanding our speech, they understand not, . . . and without mutuall acceptation, there is no Covenant."

But the premise that rights require reciprocal duties is philosophically contested and legally unsound. Our legal system recognizes numerous categories of rights-holders who bear no reciprocal duties: the unborn (for purposes of inheritance and tort law), young children, persons with severe cognitive disabilities, and—critically—corporations. Corporations are "artificial persons" that hold extensive legal rights, including rights of free speech and religious liberty, yet they are incapable of entering a social compact in the Hobbesian sense. They do not "understand our speech" or give "mutual acceptation" to the social contract. They are legal fictions to which we have chosen to extend rights because doing so serves the purposes of our legal system. If we can extend legal personhood and rights to fictional entities, the question of whether we can extend a limited form of habeas protection to demonstrably sentient, cognitively complex living beings is not self-answering or dismissible.

Moreover, the court's premise that animals exist entirely outside the framework of duty and responsibility is belied by the facts. As a factual matter, animals in many contexts bear significant responsibilities and are treated as responsible agents. Dogs serve in law enforcement, detecting narcotics, explosives, and—increasingly—diseases. They find missing persons after natural disasters. They provide security for government officials. Horses serve as therapeutic companions for individuals with mental health challenges. The U.S. military relies on dolphins to detect underwater mines. In each of these contexts, animals exercise judgment, respond to commands, and bear responsibility for outcomes that affect human lives. The law does not require that these animals enter into a "covenant" before relying on them.

The broader point is not that animals are identical to, or even necessarily the full legal equivalent of humans, but that the social compact theory—when pressed to its logical conclusions—either excludes too many beings we agree should be protected or rests on a bare (and tautological) species distinction that cannot be justified by the theory itself.

III.

The Common Law Has Never Been Static, and Michigan's Constitution Empowers This Court to Adapt It to New Knowledge.

The Court of Appeals acknowledged that it lacked authority to change the common law, noting that "only our Supreme Court may revise that common law principle." Decision at 14. Amici agree that this case is now properly before this Court. The Court of Appeals erred, however, in suggesting that the case for modification is "substantively unpersuasive." Decision at 14. As the "principal steward of Michigan's common law," *Henry v. Dow Chemical Co.*, 473 Mich 63, 83 (2005), this Court should accept the invitation that the Court of Appeals implicitly extended and examine the question on its merits.

A. The common law has always evolved.

The Michigan Constitution provides that the English common law remains in force "until it expire[s] by [its] own limitation[] or [is] changed, amended, or repealed." Const. 1963, art. 3, § 7. This provision does not freeze the common law in its 18th-century form. To the contrary, it explicitly recognizes that the common law is subject to change. This Court has long exercised the authority to ensure that Michigan's common law adapts when warranted by evolving circumstances and understandings.

The history of the common law is a history of such adaptation. Doctrines that once seemed immutable have been revised or abandoned as knowledge expanded and understanding deepened. The common law once denied married women the capacity to own property or enter contracts. It once treated children as the property of their fathers. It once held that a man could not be guilty of sexually assaulting his wife. Each of these doctrines was, in its time, defended as essential to the common law's structure. Each was eventually recognized as reflecting the limitations of the era in which it was formulated, not an immutable principle of law.

The classification of all animals as property, without regard to their cognitive complexity or capacity for suffering, belongs to this same tradition of doctrines that once seemed self-evident but that new knowledge has called into question. When Blackstone wrote his Commentaries, the cognitive and emotional capacities of nonhuman primates were poorly understood. It is now

established scientific knowledge that chimpanzees are self-aware, use tools, communicate through complex systems, form deep social bonds, experience grief, and suffer psychological harm from confinement—facts that were not available to the common law's architects and that those architects would have not had the proper full opportunity to consider material.

B. The Court of Appeals' reliance on historical authority is selective and incomplete.

The Court of Appeals' historical analysis, while thorough, presents a misleadingly partial picture. The court emphasized Blackstone's treatment of animals as property and the common law's general exclusion of animals from the category of "persons." But it did not fully grapple with the extent to which the common law has always recognized that animals occupy a distinctive place in the legal order—not simply as property like tables and chairs, but as living beings whose treatment is subject to legal constraint.

Anti-cruelty laws, which have been part of American law since the Massachusetts Body of Liberties of 1641,[2] reflect the longstanding recognition that animals are not mere objects. These laws impose duties on humans in their treatment of animals—duties that have no parallel in the law's treatment of inanimate property. No one can be prosecuted for destroying a chair. A person can be prosecuted for torturing a dog. This distinction is not accidental; it reflects a deep-seated legal intuition that animals possess morally relevant interests that the law has an obligation to protect.

The Court of Appeals asserted that the "atrocity of slavery was that the law permitted persons to be treated as property" and that the relevant historical episodes "reflect failures to honor human personhood, not expansions of it beyond the human species." Decision at 12. But that framing obscures the deeper structural point: the common law's categories of "person" and "property" have never been fixed or natural. They are legal constructs, and they have been revised throughout history in response to changing understanding. The relevant question is not whether the

[2] *See* Massachusetts Body of Liberties §§ 92–93 (1641) (prohibiting "Tirranny or Crueltie towards any bruite Creature which are usuallie kept for man's use"). The Massachusetts Body of Liberties is generally recognized as the first animal protection law in the Anglo-American legal tradition. England's first comprehensive anti-cruelty statute, Martin's Act, followed in 1822. New York enacted the first state anti-cruelty statute in 1828.

person/property binary has existed, but whether it continues to serve justice when applied wholesale and dismissively to beings whose capacities we now understand far better than Blackstone did.

The Court of Appeals' citation to the Three-Fifths Clause as evidence that enslaved persons were always recognized as "persons" actually illustrates this point. The clause's reference to "all other Persons" was not a generous recognition of enslaved people's personhood; it was a political compromise that counted enslaved people as fractional persons for purposes of apportioning congressional representation to their enslavers. Far from demonstrating that the legal system has always faithfully recognized a single clear notion of personhood, it, like the current assertion of peoplehood shielding corporations, demonstrates that the category of "person" itself has always been manipulable, shaped by political interests and moral failures—and that subsequent generations have an obligation to correct those failures rather than perpetuate them.

As this Court has recognized, "[w]hen a statutory method of investigating the right to freedom is not provided, the common-law writ of habeas corpus is appropriate." *In re Denison*, 1 Blume Sup Ct Trans 319, 319 (1807). The common law of habeas was, from its inception, a remedy of extraordinary breadth and flexibility—a remedy designed to reach "*all manner of illegal detention*." *Harris*, 394 U.S. at 291 (emphasis added). This Court should not allow a rigid, historically contingent, tautological definition of "person" to confine the Great Writ in ways its architects never intended, betraying the values and needs it was created to serve.

C. The "no natural stopping point" concern is manageable.

The Court of Appeals dismissed the possibility of a standard limited to "intelligent" animals, asserting that it "has no natural stopping point," Decision at 12, and quoting Holmes's observation that "[e]ven a dog distinguishes between being stumbled over and being kicked." But the absence of a bright-line rule has never been a basis for arbitrary refusal to recognize a right or categorically exclude deserving claimants. Much of law involves line-drawing, and courts are well-equipped to develop standards through case-by-case adjudication.

A workable standard aimed at serving the values underlying habeas might focus on scientifically demonstrated capacities such as self-awareness, complex social behavior, the ability to

communicate, desire for freedom and self-determination, and evidence of suffering from confinement—capacities that chimpanzees, our closest genetic relatives, possess in abundance. Courts need not decide today whether every animal species is entitled to habeas relief. They need only decide whether *these* chimpanzees, with *these* demonstrated capacities, have a liberty interest cognizable by habeas. As the Supreme Court demonstrated in *Lawrence*, the existence of difficult questions at the margins does not justify refusing to decide the case at hand. The Court there did not attempt to resolve every future controversy its holding might implicate; it decided the case before it. 539 U.S. at 578.

IV.

The Evolving Legal Landscape Confirms That the Rigid Person/Property Binary Is Eroding Across American Law.

The Court of Appeals cited decisions from New York (*Breheny*, *Lavery*), Colorado (*Cheyenne Mountain*), and Connecticut (*Commerford*) as authority that animals are not persons eligible for habeas relief. But this framing of the legal landscape is incomplete. Across multiple jurisdictions, the law is moving away from treating animals as indistinguishable from inanimate property, even as courts have not yet taken the step of extending habeas to nonhuman animals.

Oregon law expressly recognizes that "animals are sentient beings capable of experiencing pain, stress and fear." Or. Rev. Stat. § 167.305. New York requires courts to consider the "best interest" of companion animals in divorce proceedings, N.Y. Dom. Rel. Law § 236(B)(5)(d)(15), and California authorizes courts to determine pet custody based on the animal's care and well-being, Cal. Fam. Code § 2605—standards borrowed from child custody law. State courts and legislatures have recognized individual animals as "crime victims" for sentencing purposes under animal cruelty statutes. *See, e.g.*, *State v. Crow*, 429 P.3d 1053, 1056 (Or. Ct. App. 2018) (legislature intended each animal to be a separate victim for merger purposes); Md. Code, Crim. Law § 10-604(a) ("each animal harmed . . . shall be deemed an individual victim for purposes of the sentencing guidelines stacking rule"). These developments do not establish that animals are "persons" for all purposes, but they demonstrate that the law is already moving beyond the binary or all-or-nothing framing the Court of Appeals treated as dispositive.

Michigan's own law reflects this same trajectory. The state's animal cruelty statute refers to the "animal victim" in its sentencing provisions and authorizes courts to order defendants to pay "the costs of the care, housing, and veterinary medical care for the animal victim." MCL 750.50b(10). The statute separately defines "companion animal," MCL 750.50b(1)(b), and recognizes the human-animal bond by providing enhanced penalties when cruelty to a companion animal is committed "with intent to cause mental suffering or distress to a person or exert control over a person." MCL 750.50b(4). Courts may permanently prohibit convicted defendants from owning animals. MCL 750.50b(12). These are protections that have no parallel in the law governing inanimate property. Michigan's criminal law already treats animals as something more in other circumstances—as beings whose suffering matters to the legal system in its own right. It is not, and need not be, all or nothing.

Moreover, the very decisions the Court of Appeals cited as uniform authority against habeas relief for animals contain significant markers of judicial discomfort with the existing framework. Justice Fahey's concurrence in *Lavery* is the most prominent example, but the *Breheny* majority itself acknowledged the "difficult" nature of the question and the "cogent" arguments in favor of recognizing some form of legal right for cognitively complex animals. The *Lavery* appellate division went out of its way to note that the question was one "the Legislature may wish to address." 152 A.D.3d at 78. These are not the marks of a settled consensus; they are signals that the current framework is straining under the weight of new knowledge about animal cognition, the harms of the current mistreatment, and the moral implications that follow.

The history of civil rights litigation teaches that legal change often proceeds through precisely this pattern: initial categorical rejection; followed by expressions of judicial, public, and even legislative discomfort; followed by recognition that the old categories and categorical exclusions cannot be sustained. The Supreme Court's summary dismissal of the first marriage equality case, *Baker v. Nelson*, 409 U.S. 810 (1972)—a one-sentence disposal for "want of a substantial federal question"—was followed by decades of incremental legal developments, judicial concurrences calling for reconsideration, and growing legislative recognition before the Court finally reached the merits in *Obergefell*. Amici do not predict that the path for nonhuman rights will necessarily follow the same trajectory. But they urge this Court to recognize that the current moment—in which courts acknowledge the "difficulty" and "importance" of these claims while refusing to

engage with their substance—is a familiar inadequate juncture, and one at which a court of last resort has the power to chart a different course.

This Court is not bound by the decisions of sister states. It is the "principal steward of Michigan's common law," *Henry v. Dow Chemical Co.*, 473 Mich at 83, and has the independent authority and obligation to determine the scope of the habeas writ guaranteed by the Michigan Constitution. The question is not whether other courts have answered the question one way, but whether they have answered it *correctly*. Amici respectfully submit that they have not—and that Michigan's common law tradition is strong enough to lead rather than follow.

RELIEF SOUGHT

For the foregoing reasons, amici respectfully urge this Court to reverse the judgment of the Court of Appeals and remand with instructions for the circuit court to issue an order to show cause, thereby requiring Defendants-Appellees to justify the chimpanzees' continued confinement and allowing the court to evaluate the merits of the habeas petition based on a full evidentiary record, not short-circuited by arbitrary exclusions. Should the Court wish to provide broader guidance, amici urge this Court to hold that the common law's categorical exclusion of nonhuman animals from habeas relief does not survive scrutiny when applied to cognitively complex, self-aware animals such as chimpanzees, and to remand for proceedings consistent with that holding.

At minimum, this Court should hold that the question of whether cognitively complex nonhuman animals have a liberty interest cognizable by habeas corpus is one that merits substantive judicial engagement—not summary dismissal based on the species of the petitioner.

Dated: February 12, 2026

Respectfully submitted,

/s/ *Anne Argiroff*

Anne Argiroff, P37150
Attorney for Proposed Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of MCR 7.212, MCR 7.305, and MCR 7.312. This brief contains 6,448 words including the cover page through the signature block on page 16, excluding the certificate of compliance and certificate of service, and uses 12 point font and 1.5-linespaced text.

/s/ Anne Argiroff
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Attorney for Proposed Amici Curiae

CERTIFICATE OF COMPLIANCE WITH MCR 7.312(H)(5)

I certify that this brief complies with MCR 7.312(H)(5). See n. 1 pg. 1, *supra*.

/s/ Anne Argiroff
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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, a true and correct copy of the foregoing Brief of Amici Curiae Shannon Minter and Evan Wolfson was electronically filed and served via the MiFILE system on all counsel of record.

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