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SCWC-24-0000323

IN THE SUPREME COURT OF THE STATE OF HAWAII

NONHUMAN RIGHTS PROJECT, INC. on
behalf of Mari and Vaigai, individuals,

Petitioner/Petitioner-Appellant,

v.

CITY AND COUNTY OF HONOLULU OF
ENTERPRISE SERVICES and its
DIRECTOR, DITA HOLIFIELD, and the
HONOLULU ZOO DIRECTOR, LINDA
SANTOS,

Respondents/Respondents-Appellees.

CAAP-24-0000323

(Petition for a Common Law Writ of Habeas
Corpus)

INTERMEDIATE COURT OF APPEALS

Hon. Keith J. Hiraoka (Presiding Judge)

Hon. Clyde J. Wadsworth (Associate Judge)

Hon. Kimberly T. Guidry (Associate Judge)

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
OF THE HAWAII VETERINARY MEDICAL ASSOCIATION
AND AMERICAN VETERINARY MEDICAL ASSOCIATION
IN SUPPORT OF RESPONDENTS-APPELLEES**

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HAWAII VETERINARY MEDICAL ASSOCIATION AND AMERICAN VETERINARY
MEDICAL ASSOCIATION MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to HRAP Rule 28(g), the Hawaii Veterinary Medical Association (HVMA) and the American Veterinary Medical Association (AVMA) respectfully move this Court for leave to file the accompanying *amici curiae* brief¹, attached as Ex. A. As organizations dedicated to veterinary care, the proposed *amici* have a substantial interest in ensuring that Hawai'i laws promote sound animal welfare policies through clearly defined rights and responsibilities governing the ownership of animals. Providing animals with the same personhood status recognized in humans, including for the purposes of a writ of habeas corpus, is contrary to this goal.

The HVMA is a non-profit member association of more than 150 licensed veterinarians in the state of Hawai'i. It supports and represents those members through a range of programs, including advocating to the state government and providing continuing education. HVMA members are actively involved in making sure that the profession develops the best professional guidelines and laws, and are up-to-date with new developments. It also advocates for responsible ownership of animals, including livestock, pets and animals in zoos and other facilities.

Established in 1863, the AVMA is the national voice for the veterinary profession. The AVMA has more than 111,000 members, representing about 75% of U.S. veterinarians. The AVMA is committed to advancing the science and practice of veterinary medicine, including its relationship to public health, biomedical science, the environment, and agriculture. It also advocates for improving food safety and security, advancing veterinary medical education, enhancing animal and human health and welfare, strengthening biomedical research, and fostering a healthy environment. It achieves these goals through research, education, collaboration, policy and professional guidance, accreditation, advocacy, development of legislation and regulations, and the filing of *amicus curiae* briefs.

The proposed brief seeks to assist the Court by explaining how courts in every state in the country, including Hawai'i, have consistently and uniformly adhered to the ownership legal structure for governing all human-animal relationships. It demonstrates how courts have uniformly

¹ No party or its counsel authored this brief in whole or in part; and no party, party's counsel, or other person or entity—other than *amici curiae* or their counsel—contributed money intended to fund preparing or submitting the brief.

rejected attempts, such as the one here, to establish legal personhood rights for animals through writs of habeas corpus and other novel legal theories. The brief further discusses the specific shortcomings that courts in other states have found in writs of habeas corpus, such as this one, where the writ is not seeking to free a person from captivity. It also explains how conferring legal personhood rights on animals would undermine animal welfare, impair the ability of animal owners—from zoos to agricultural businesses to families—to care for their animals, and lead to other adverse consequences. Finally, the brief accentuates a theme from the concurrence below that the multitude of considerations at issue in this case underscore why the State Legislature is the appropriate body to develop the fundamental rights and responsibilities for animals raised here.

WHEREFORE, the proposed *amici* respectfully request that the Court grant this motion.

DATED: Honolulu, Hawai‘i, July 13, 2026.

/s/ Edward Gaus

EDWARD GAUS

Attorney for Amici Curiae

Hawaii Veterinary Medical Association and

American Veterinary Medical Association

EXHIBIT A

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HAWAII VETERINARY MEDICAL ASSOCIATION AND
AMERICAN VETERINARY MEDICAL ASSOCIATION
IN SUPPORT OF RESPONDENTS-APPELLEES**

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INTEREST OF AMICI CURIAE¹

Amici curiae are the Hawaii Veterinary Medical Association (HVMA) and the American Veterinary Medical Association (AVMA). These organizations have a substantial interest in ensuring that Hawai'i laws promote sound animal welfare policies through clearly defined rights and responsibilities governing the ownership of animals. Providing animals with the same personhood status recognized in humans, including for purposes of a writ of habeas corpus, is contrary to this goal and has been denied in cases like this one for that reason. Courts have found that changing the legal status of animals may advance some private animal rights groups' agendas, but not animal welfare. *Amici* urge the Court to join with these courts, affirm the legal status of animals as cherished and protected interests of their owners—which makes them very different from inanimate “things”—and maintain the legal structure that has long been effective in advancing the welfare of animals.

The HVMA is a non-profit member association of more than 150 licensed veterinarians in the state of Hawai'i. It supports and represents those members through a range of programs, including advocating to the state government and providing continuing education. HVMA members are actively involved in making sure that the profession develops the best professional guidelines and laws, and are up-to-date with new developments. It also advocates for responsible ownership of animals, including livestock, pets, and animals in zoos and other facilities.

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INTRODUCTION

This case has enormous magnitude. Granting any private organization the right to file a writ of habeas corpus on behalf of an animal would completely redefine the human-animal legal relationship, not just with respect to the elephants Mari and Vaigai living at the Honolulu Zoo, but for all animals. As a multitude of courts from around the country have stated in denying similar petitions for writs of habeas corpus from the Nonhuman Rights Project (NRP), changing the legal categorization of animals to “persons,” including for these purposes, would “upend the state’s legal system.” *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839, 844 (Conn. Ct. App. 2019). In Hawai’i and all other states, the legal system governing animals has always been based on ownership, which is not demeaning to animals. To the contrary, this system respects and protects animals—in zoos, homes, research facilities, and farms—through well-defined rights and responsibilities that have developed over the years to advance animal welfare. It should be maintained and strengthened, as all states have done, not discarded.

In addition, the writ of habeas corpus here—as with the writs in the other animal cases—fundamentally “misunderstands the interest habeas vindicates.” *Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC*, -- N.W.3d --, 2025 WL 2957821, at *10 (Mich. Ct. App. Oct. 17, 2025). The sole purpose of a writ of habeas corpus is to free a person from false imprisonment, slavery, or some other unlawful restraint on their liberty. It is based on the cognizable interest in personal liberty inherent to each person in a body politic, and the sole remedy is to set the person free. As courts have explained, nonhuman animals are not part of the body politic, do not have these rights, and would not be set free even if such a writ were to be granted. *See id.* at *11. NRP’s argument that the Honolulu Zoo’s treatment of Mari and Vaigai is substandard and the elephants should be transferred to a different owner, therefore, is immaterial. In a habeas case, it is irrelevant whether the falsely imprisoned person is treated impeccably or poorly; the false imprisonment is the only wrong to be corrected. Here, the treatment standards for Mari and Vaigai are governed by the Animal Welfare Act, 7 U.S.C. §§ 2131 *et seq.*, along with industry accreditation standards that are routinely updated. If NRP believes these standards are insufficient, its recourse is to pursue changes to this regulatory regime. And, if NRP believes these animals should no longer be owned at all, it should seek that change through Congress and the State Legislature, which can weigh their interests against many other stakeholders, as well as the societal value people place on zoos and other venues that provide opportunities to meet and learn about elephants and other animals.

The veterinary community files this brief because it is deeply concerned about the impact that redefining the human-animal legal system and granting this writ would have on the welfare of animals. Allowing private individuals or organizations to take away another's ownership interests in an animal based on their own subjective beliefs as to how those animals should be treated would adversely impact animal welfare generally. History has shown that animal ownership is not just permissive, it is protective. Congress and state legislatures have enacted important regulatory safeguards that promote responsible animal ownership, deter abuse, and advance animal care. Owners should be held to these standards. Fundamentally altering these rights and responsibilities, as proposed here, would undermine many owners' ability to do so by creating instant, enormous, and pervasive confusion that could limit—or even eliminate—the ability of some owners to care for their animals. Further, allowing owners' care decisions to be objected to by others would mean that many animals would not receive the timely care they need during legal battles over their fate—regardless of whether owned by zoos, farmers, research facilities, or families and what care those owners believe is in the best interests of their animals. In these situations, it is the animal who will suffer. Put simply, granting this writ is not the pro-animal position.

For these reasons, as detailed below, *amici* respectfully request that the Court deny this writ of habeas corpus. Animal owners, including the Honolulu Zoo, should remain solely responsible and accountable for properly caring for and treating their animals.

ARGUMENT

I. COURTS HAVE UNIFORMLY ADHERED TO OWNERSHIP AS THE LEGAL STRUCTURE FOR GOVERNING THE HUMAN-ANIMAL RELATIONSHIP

This case goes to the heart of the distinctions between animal rights and animal welfare that have split the animal-loving community for decades. To many people outside the animal community, these concepts are often conflated, but they rest on fundamentally different premises. Animal welfare focuses on animal well-being, whereas animal rights rejects the use and ownership of animals as morally illegitimate, regardless of the impact on animal welfare. Joyce Tischler, the founder of the Animal Legal Defense Fund (ALDF), has explained that “[n]ot every animal lawyer has greeted [the animal rights approach] with enthusiasm.” Joyce Tischler, *A Brief History of Animal Law, Part II*, 5 Stan. J. of Animal L. & Pol. 27, 52 (2012). As she wrote, the “work for progressive welfare reforms . . . has gained a good deal of traction,” *id.*, whereas the pure animal rights reforms have often not succeeded because they could lead to less humane conditions.

Over the past two decades, the NRP has been filing writs of habeas corpus for various animals—mostly elephants in zoos—to advance this animal rights agenda. It has made no secret that wholesale reclassification of animals is its ultimate goal. *See DeYoung Family Zoo*, 2025 WL 2957821, at *1 (noting NRP “is a nonprofit advocacy organization that describes itself as ‘dedicated solely to securing legal rights for nonhuman animals’”). Its endgame, along with other animal rights groups, is to confer legal “personhood” on all animals, including “gorillas, orangutans, bonobos, Atlantic bottlenose dolphins, African gray parrots, African elephants, dogs and honeybees”—regardless of the markers of intelligence and autonomy they say are the rationales for granting the writ here. *Beastly Behavior?*, The Wash. Post, June 5, 2002, at C1 (quoting NRP founder Steven Wise). NRP plans “to file as many suits as we have the funds to be able to pursue.” Michael Mountain, *Lawsuit Filed Today on Behalf of Chimpanzees Seeking Legal Personhood*, Nonhuman Rights Project (Dec. 2, 2013). As part of this broad campaign, animal rights groups have filed writs of habeas corpus for elephants and chimpanzees, sought to apply the Thirteenth Amendment against slavery to orcas, and filed suit for the world’s whale, porpoise, and dolphin populations against U.S. Navy operations. *See Tilikum v. SeaWorld Parks & Entm’t, Inc.*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012) and *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004). They have been looking for a court to legally equate animals with people in any context.

Courts have uniformly rejected these efforts, refusing to redesignate animals as legal “persons” for writs of habeas corpus or in any of these other cases. *See, e.g., Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society*, 562 P.3d 63 (Colo. 2025) [hereinafter “Cheyenne Mountain Zoo”]; *Nonhuman Rights Project, Inc. v. Breheny*, 197 N.E.3d 921, 924 (N.Y. 2022) (“[W]hile no one disputes that elephants are intelligent beings deserving of proper care and compassion, the courts below properly granted the motion to dismiss the petition for a writ of habeas corpus.”); *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D. 3d 148, 152 (N.Y. Sup. Ct. App. Div. 2014) (“[It is] inappropriate to confer upon chimpanzees the legal rights—such as the fundamental right to liberty protected by the writ of habeas corpus—that have been afforded to human beings.”); *Commerford*, 216 A.3d at 846 (finding no rationale for extending common law “with respect to disturbing who can seek habeas corpus relief”); and *Rowley v. City of New Bedford*, 159 N.E.3d 1085 (Mass. Ct. App. 2020) (unpublished) (habeas corpus laws “unambiguously refer solely to ‘person,’” which is “synonymous” with humans.).

In the case seeking to apply the Thirteenth Amendment to orcas, People for the Ethical Treatment of Animals (PETA) sued SeaWorld seeking injunctive relief that the aquarium's holding of orca whales violated slavery and involuntary servitude. *See Tilikum*, 842 F. Supp. 2d at 1260 (alleging the whales were “held captive”). As here, PETA alleged orcas “engage in many complex social, communicative, and cognitive behaviors” and cannot “make conscious choices” for their mental and physical well-being in an aquarium. The court rejected the claim, concluding “the Thirteenth Amendment only applies to ‘humans.’” *Id.* at 1262. In doing so, the court made clear that animals have legal protections—“there are many state and federal statutes affording redress to Plaintiffs, including, in some instances, criminal statutes that punish those who violate statutory duties that protect animals”—but the orcas remain SeaWorld's property. *Id.* at 1264.

Indeed, in all states, including Hawai'i, animals are considered the “property” interests of their owners. *See Campbell v. Animal Quarantine Station*, 63 Haw. 557, 564 n. 5 (1981) (“The law clearly views a dog as personal property.”). This designation has served as somewhat of a rallying cry for animal rights groups, who argue that animals should not be treated as ashtrays or tables. One of the most sustained campaigns along these lines has been their decades-long effort to change tort law damages governing injuries to and deaths of pets, arguing pet owners should be able to get loss of companionship-type damages available for immediate family members. *See Phil Goldberg, Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Value, and Animal Welfare*, 6 Stan. J. of Animal L. & Pol'y 30 (2013). Although many courts have been sympathetic to the objection to the “property” label, they have not changed the legal designation of animals or used this label to create uncertain law. *See e.g., Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186-87 (Va. 2006) (noting in every state the law “regards animals, however beloved, as property”); *Goodby v. Vetpharm*, 974 A.2d 1269 (Vt. 2009) (affirming animals are personal property but distinguishing them from animate objects).² In Hawai'i, the law briefly allowed people to recover noneconomic damages for harm to property generally, which included pets, but that was

² *See also Hey v. Moran*, No. 2002-569 (PC 01-3682) (R.I. 2003) (“under Rhode Island law, a dog is classified as property”); *Strawser v. Wright*, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992) (while the court “sympathize[d] with one who must endure the sense of loss which may accompany the death of a pet,” it “cannot ignore the law”); *Ammon v. Welty*, 113 S.W.3d 185, 187 (Ky. Ct. App. 2002) (“The affection an owner has for, and received from, a beloved dog is undeniable. It remains, however, that a dog is property, not a family member.”).

legislatively overturned. *See Campbell*, 63 Haw. at 564 (decided in 1981, allowing noneconomic damages for “negligent destruction of property”). *Campbell* was followed in 1986 by Haw. Rev. Stat. § 663-8.9 (barring such damages “arising solely out of damage to property”). The “property” designation remains in effect in all states, including in Hawai’i, for establishing legal obligations.

Throughout the development of this body of case law, the nation’s courts have taken care to explain that any discomfort with the “property” label does not undermine the value society places on animals, does not change the many protections that statutory and common law provide animals, and should not be the basis for changing legal rights, particularly under the common law. In a case that made national headlines, the Texas Supreme Court explained “[t]he term ‘property’ is not a pejorative but a legal descriptor, and its use should not be misconstrued as discounting the emotional attachment that pet owners undeniably feel.” *Strickland v. Medlen*, 397 S.W.3d 184, 186 (Tex. 2013). The Wisconsin Supreme Court also stated it was “uncomfortable with the law’s cold characterization of a dog . . . as mere ‘property,’” and “[t]o the extent this opinion uses the term ‘property’ in describing how humans value the dog they live with, it is done only as a means of applying established legal doctrine to the facts of this case.” *Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (Wis. 2001). Thus, the “property” label has never—and should not here—motivate reclassifying animals as legal persons or giving them personhood rights.

To be clear, no one is suggesting that animals are property like ashtrays and tables. States widely recognize that one’s property interest in an animal is not inviolate, including requiring owners to provide animals with adequate care under the law—which clearly sets animals apart from inanimate “things.” A series of cases in the Oregon Supreme Court provides a vivid example of this point. In *State v. Fessenden*, neighbors reported to police that defendant’s horse appeared to be starving. 333 P.3d 278, 280 (Or. 2014). An officer trained in animal husbandry and cruelty observed the horse from the neighbor’s property and identified signs of emaciation and critical illness. *See id.* He reasonably believed if he took the time to obtain a warrant, the horse might collapse and suffer a fatal injury. *See id.* He entered defendant’s property, seized the horse, and took it to a veterinarian. *See id.* The Oregon Supreme Court held the warrantless action was justified by the exigent circumstances exception to protect *property*—not emergency aid exception that applies only to persons. *See id.* at 288. It later explained that although state law “prohibits humans from treating animals in ways that humans are free to treat other forms of property,” it “does not place them on par with humans.” *State v. Newcomb*, 375 P.3d 434, 441 (Or. 2015).

Thus, in Hawai'i, and every other state, the law sets forth the right to own animals, which kinds of animals can be owned by whom, and guidelines for and limitations on ownership rights. These laws include the right of the Honolulu Zoo to own elephants, including Mari and Vaigai, along with the many other animals in its facilities. There is no legal foundation upon which a writ of habeas corpus can be asserted to remove Mari and Vaigai from the Zoo's ownership.

II. COURTS HAVE WIDELY REJECTED ESTABLISHING LEGAL PERSONHOOD FOR ANIMALS THROUGH WRITS OF HABEAS CORPUS

As indicated, courts have uniformly rejected attempts to establish legal personhood rights for animals through writs of habeas corpus. In the past few years, the state high courts in New York and Colorado, along with several courts of appeals, have issued in-depth responses to writs practically identical to the one here explaining their legal deficiencies. At the heart of these rulings is the fundamental notion that writs of habeas corpus are available only to persons. *See Breheny*, 197 N.E.3d at 921 (holding NRP could not file a writ to remove an elephant from the Bronx Zoo); *Cheyenne Mountain Zoo*, 562 P.3d at 63 (holding NRP could not transfer five elephants from the Cheyenne Mountain Zoo to a sanctuary). As with the Court of Appeals below, these high courts based their holdings on both statutory and common law habeas corpus doctrines. As the Colorado Supreme Court explained, including nonhuman animals in the writ of habeas corpus statute “is the type of monumental change in the law that one would reasonably expect the General Assembly to make explicit,” and “nothing in the common law supports NRP’s position, which rests primarily on a concurring opinion and two dissenting opinions in its unsuccessful efforts to extend the writ of habeas corpus to nonhuman animals.” *Id.* at 69. Indeed, “[e]very one of [NRP’s] petitions for writ of habeas corpus has been denied for the same or very similar reasons.” *Id.*³

In addition, these courts have identified several deficiencies with the writs themselves, most notably that NRP is not actually seeking to have the animals freed from captivity, which is the sole purpose of a writ of habeas corpus. The great writ of habeas corpus, as it has been called, was designed solely to “release persons from illegal confinement.” *In re Apuna*, 6 Haw. 732, 734 (1869). Consequently, “[p]ersons seeking a writ of habeas corpus must establish more than just

³ Petitioner questions why the New York Court of Appeals ruling in *Breheny* should have more precedential value than the dissents in that case. *See Reply* at 9. In addition to the fact that the dissents do not state the law, but the opinions of individual judges, these dissents have been called “aspirational flights of fancy” unrestrained by the practical implications of the rights they would create. Order, Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society and Bob Chastain, No. 2023-CV-301236 (Colo. Dist. Ct., Dec. 3, 2023), at 18.

confinement to justify issuance; they must show that their confinement is illegal.” *Breheny*, 197 N.E.3d at 927. And, if illegal confinement is proved, the sole remedy is releasing them from all confinement. As courts have held, zoo ownership of elephants is not illegal and “NRP is not actually seeking the right to liberty—that is, freedom from captivity—for the elephants.” *Cheyenne Mountain Zoo*, 562 P.3d at 70. Unlike a human released from slavery or other imprisonment, Mari and Vaigai cannot be released in Honolulu or anywhere else. Thus, NRP is asking for the *transfer* of the elephants to a “different confinement,” which the Colorado Supreme Court stated was a key indicator habeas relief is “not appropriate here.” *Id.* As the New York high court expounded, the notion that the elephants would simply be transferred from “one confinement to another” is “an implicit acknowledgement that [the elephant] does not have a legally cognizable right to be at liberty” and “demonstrates the incompatibility of habeas relief in the nonhuman context.” *Breheny*, 197 N.E.3d at 928. NRP simply has no right to remove Mari and Vaigai from the home they have known for decades, including their familiar surroundings, routines, caregivers, and veterinarians.

The courts have also explained that there is no limiting principle for which animals would be eligible for such habeas relief. In its other cases, as here, NRP has argued that the writ of habeas corpus should be granted for elephants because elephants “are autonomous beings with complex biological, psychological, and social needs,” Pet. Brief at 9, and submitted affidavits like the ones here. However, habeas protections do not flow “from a being’s ability to pass some type of autonomous capacity test,” but personhood. *Cheyenne Mountain Zoo*, 562 P.3d at 70. “[N]o one disputes that elephants are intelligent beings deserving of proper care and compassion,” but “[t]he selective capacity for autonomy, intelligence, and emotion of a particular nonhuman animal species is not a determinative factor in whether the writ is available as such factors are not what makes a person detained qualified to seek the writ.” *Breheny*, 197 N.E.3d at 927. These qualities—intelligence and autonomy—also do not provide courts with any bright-line principles.

Indeed, in other cases, groups have suggested varying criteria for legal personhood. In *Tilikum*, PETA suggested orcas should be freed from ownership because orcas demonstrate “mental stress” and “behavioral abnormalities” when living in an aquarium. 824 F. Supp. 2d at 1261. Others have suggested that legal rights should be conveyed to any animal that is considered a “sentient” being. Diane Sullivan & Holly Vietzke, *An Animal Is Not an iPod*, 4 J. Animal L. 41, 43 (2008) (“With a recognition that animals are sentient creatures capable of experiencing great pain should come a realization that animals are not property—not innate objects—and our legal

system must recognize this.”). Others have suggested all “vertebrate animals” should be able to enter contracts, file lawsuits, and engage in other legal actions. David Favre, *Living Property: A New Status for Animals within the Legal System*, 93 Marq. L. Rev. 1021, 1047 (2010). Courts have expressed concern that granting legal rights to animals based on any such criteria is unprincipled because there is “no sensible or just stopping point.” *Rabideau*, 627 N.W.2d at 802. It would be impossible “to cogently identify the class of” animals for legal rights, as arguments could be made for “an enormous array of living creatures.” *Id.*; see also *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1126 (Ohio Ct. App. 2003) (finding “difficulty in defining . . . classes of animals for which” rights should be conveyed). In addition, “[t]here are fears of flooding the courts with spurious and fraudulent claims; problems of proof . . . [and] exposing [a] defendant to an endless number of claims.” *Myers v. City of Hartford*, 853 A.2d 621, 625 (Conn. Ct. App. 2004). As the Texas Supreme Court concluded, given the “menagerie of animals” that could merit such treatment, any line-drawing would “resemble judicial legislation.” *Strickland*, 397 S.W.3d at 195.

Finally, courts have questioned whether self-appointed groups, which would include NRP here, would have standing—on their own or as “next friend”—to bring these actions. See *Cheyenne Mountain Zoo*, 562 P.3d at 66 (noting the trial court “determined that [NRP] did not have proper next friend status to bring a habeas petition on elephants’ behalf because it failed to establish that it was in a better position to speak for the elephants than the Zoo,” which has been working with and caring for the elephants for decades). As a general matter, courts have been highly skeptical of allowing third parties to bring cases on behalf of animals. The Ninth Circuit in *Cetacean* took notice that the plaintiff was a “self-appointed attorney” who formed a group called “The Cetacean Community” for the purpose of filing the lawsuit and purported to represent “all of the world’s whales, porpoises, and dolphins.” 386 F.3d at 1171. Of particular concern is that the animal rights and private agendas of the groups can often differ from the interests of those they purport to represent. See Terry Carter, *Beast Practices: High-Profile Cases Are Putting Plenty of Bite into the Lively Field of Animal Law*, 93-Nov A.B.A. J. 39, 41 (2007) (quoting a lawyer acknowledging this tension and saying their sole interest is to invoke the animals’ interests to “evolve the law”).

This third-party issue came to a head in *Naruto v. Slater*, where the Ninth Circuit found PETA employed Naruto “as an unwitting pawn in its ideological goals.” 888 F.3d 418, 421 n.3 (9th Cir. 2018). PETA filed the action for a monkey named Naruto against a wildlife photographer, claiming the monkey qualified as a person for asserting copyright infringement after the

photographer published selfies the monkey took with the photographer's camera. *See id.* at 420 (finding PETA had no "significant relationship" with the monkey, making the monkey "a pawn to be manipulated on a chessboard larger than his own case"). When it appeared it was losing the appeal, PETA sought to settle, dismiss the appeal, and vacate the district court's judgment. *See id.* at 421 n.3. The Ninth Circuit noted PETA "abandoned Naruto's substantive claims in what appears to be an effort to prevent the publication of a decision adverse to PETA's institutional interests." *Id.* The court then denied PETA's standing to represent Naruto, concluding PETA "fails to meet the 'significant relationship' requirement and cannot sue as Naruto's next friend." *Id.* at 421.

In a pointed concurrence, Judge Smith cautioned, "[a]nimal-next-friend standing is particularly susceptible to abuse. Allowing next-friend standing on behalf of animals allows lawyers (as in Cetacean) and various interest groups (as here) to bring suit on behalf of those animals or objects *with no means or manner to ensure the animals' interests are truly being expressed or advanced.*" *Id.* at 432. "Such a change would fundamentally alter the litigation landscape. Institutional actors could simply claim some form of relationship to the animal or object to obtain standing and use it to advance their own institutional goals." *Id.* "Because the 'real party in interest' can actually *never credibly articulate its interests or goals*, next-friend standing for animals is left at the mercy of the institutional actor to advance its own interests, which it imputes to the animal or object with *no accountability.*" *Id.*

Here, NRP is such a self-selected group. It has been raising money in connection with this litigation campaign, selling apparel, tote bags and mugs in addition to other fundraising activities. As NRP has stated in its annual report, this fundraising campaign has helped sustain "habeas corpus work seeking liberty for 21 nonhuman animal clients across five states."⁴ Transferring Mari and Vaigai to a different facility could provide a platform for NRP to continue fundraising in their names. Undoubtedly, if this writ were granted groups would vie to "represent" animals in zoos, aquariums, and other facilities in an effort to sustain their organizations. Yet, none of them would truly be speaking for those animals.

III. CONFERRING LEGAL PERSONHOOD ON ANIMALS WOULD UNDERMINE ANIMAL WELFARE AND LEAD TO ADVERSE CONSEQUENCES

Courts have also made clear that denying one of these writs of habeas corpus "does not turn on our regard for these majestic animals." *Cheyenne Mountain Zoo*, 562 P.3d at 70. "[T]he

⁴ Nonhuman Rights Project, 2025 Annual Report, at <https://nhrrannualreport.com/>.

relationships between humans and nonhuman animals are varied and complex and, in many contexts, the law clearly imposes a duty on humans to treat nonhuman animals with dignity and respect.” *Breheny*, 197 N.E.3d at 932. As indicated, the veterinary community is deeply concerned about the implications of allowing outside groups to interfere with or possibly harass animal owners in their ability to own, direct, and care for their animals. If this writ is granted, a third party could readily petition a court for custody of any animal if it disapproves of how the owner is lawfully treating it, to stop an owner from euthanizing an animal (which is one of the hardest decisions of ownership), or to prohibit spaying or neutering an animal by arguing the animal would be deprived of its reproductive rights. None of these outcomes would seem farfetched anymore.

These concerns are not new. For 20 years, animal rights groups have been urging municipalities to change the terminology in their city ordinances from pet “owners” to “guardians.” See *Ownership versus Guardianship*, Am. Veterinary Med. Ass’n (2005).⁵ Some advocates have insisted these guardianship laws would not impose the human ward-guardian legal system onto animals and their owners, but are simply meant to convey a greater sense of stewardship. Others, though, have openly acknowledged that guardianship laws would allow them to raise new legal questions if there are conflicting views “as to the best interests of an animal.” Position Statement on Ownership/Guardianship, ASPCA.⁶ As a veteran legal commentator asked: “Will there come a time when dogs can sue for a new guardian—or to avoid being put to sleep?” Jeffrey Toobin, *Rich Bitch*, The New Yorker, Sept. 29, 2008.⁷ For these reasons, neutral public policy groups have opposed any such changes to animal ownership laws. See Council of State Governments, *Resolution on Animal Guardianship and Liability Legislation* (2004).

As people have appreciated, changing the ownership structure could have adverse impacts on the ability of owners to treat livestock, companion animals, and animals owned by various types of entities. Consider an elderly dog that has developed a severely arthritic hip. Currently, an owner has several treatment options available, from hip replacement surgery to less invasive and less costly alternatives. Some owners may opt for hip replacement surgery, but others may choose one

⁵ <https://www.avma.org/advocacy/state-local-issues/state-advocacy-issue-ownership>

⁶ <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-ownershipguardianship>; see also Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 Animal L. 163, 235 (2004) (“[I]f a legal conflict does arise over an animal’s best interest, who will be the arbiter of any decision?”).

⁷ http://www.newyorker.com/reporting/2008/09/29/080929fa_fact_toobin

of the other options. If an animal rights group believes hip replacement is in the best interest of the animal, it could force the dog's owner to accept that option regardless of the dog's discomfort or the owner's ability to afford the procedure. Critical questions would also be raised about the legal implications should a veterinarian disagree with an owner's treatment decision, such as whether to treat a compound fracture or select euthanasia. The veterinarian may have to seek a court's directive, leaving the animal in pain and with an increased risk of an infection while awaiting the decision. Another concern is that certain veterinary records are confidential but may have to be disclosed to any third party who believes an animal should be treated differently.

Equally troubling would be the impact on the broader community. From a human health perspective, controlling animal disease in the food chain, as well as rabies and other zoonotic disease, are important functions of veterinary services. The government also needs to control and quarantine dangerous animals and require vaccinations. And, the concept of assistance or working animals, including guide dogs, hearing dogs, and police dogs, may be objectionable to some animal rights groups. Third-party lawsuits could interfere with all of these important functions. The same is true for biomedical research, which contributes to improving the care of people and animals, and food animal husbandry. Outside groups could also interfere with animal ownership transfers, such as breeder sales, taking over ownership after a parent dies, or the purchasing of livestock.⁸ Also, if a pet injures a neighbor's child, the owner's insurance company might deny coverage for the child's treatment because the animal would no longer be defined as property. The list goes on.

Finally, the assertion of a sudden or recent shift in societal values toward animals is a red herring and undermined by the recent and extensive case law discussed above.⁹ Humans have long valued animals, and to the extent there has been a shift in attitudes, it is for enhanced animal welfare protections, not legal personhood. Most Americans value animal ownership. According to

⁸ Hawai'i law prohibits the stealing of livestock. See Haw. Rev. Stat. § 708-835.5. This statute would be vitiated if a person or entity stealing livestock claims the animal possessed enough intelligence and "autonomy" to prefer its new home.

⁹ Their own rhetoric belies this proposition. Mr. Wise has said "dogs have been mankind's companion throughout the ages." Brief of the Appellant, *Goodby v. Vetpharm, Inc.*, No. 2008-030 (Vt. Mar. 1, 2008), at 19. Animal rights lawyer Chris Green noted dogs were brought on the Mayflower and "were the first domesticated animals" in America. Green, *supra*, 10 Animal L. at 165 n.5. Another advocate, citing the biblical story of a man who raised a lamb like a child, stated: "even in biblical times, the law recognized that animals in close relationship with people were considered more than mere property." Christopher D. Seeps, *Animal Law Revolution: Treating Pets as Persons in Tort and Custody Disputes*, 2010 U. Ill. L. Rev. 1339, 1342 (2010).

recent statistics, 58.6 percent of American households owned animals, including 39 percent of Hawai'i households. See U.S. Pet Ownership Statistics, Am. Veterinary Med. Ass'n.¹⁰; Kathleen Baker, *Baseline Estimates for Companion Animals Living in Households in Hawai'i*, 84 Haw. J. Health & Soc. Welfare 10 (2025). Americans also widely visit zoos and aquariums. Awarding the legal personhood rights to animals sought here is at odds with these mores.

The current ownership structure works and has been developed over decades to advance animal welfare. The blunt tool of a writ of habeas corpus cannot adequately address these fundamental aspects and questions related to the rights and responsibilities of animal ownership or the many adverse ramifications of allowing the relief sought here.

IV. LEGISLATURES ARE THE APPROPRIATE BODIES TO DEVELOP THE FUNDAMENTAL LEGAL RIGHTS AND RESPONSIBILITIES GOVERNING ANIMAL WELFARE

As the concurrence below articulated well, the multitude of public policy considerations discussed above demonstrate that determining the rights and protections afforded to animals is ideally suited for the legislature.¹¹ Legislatures can balance the interests of the many affected stakeholders—from zoos, animal sanctuaries, and other entities that keep animals; to owners of companion animals or animals contributing to the food supply; to veterinarians and other animal health care providers; to animal rights groups.

The Hawai'i State Legislature, as well as legislatures around the country, has long exercised this authority to provide greater legal protections for animals as societal values have evolved. These legal reforms have long included enacting animal cruelty statutes as well as laws related to animals' welfare, the environment, and animal conservation. See, e.g., *Thomas G. Kelch, A Short History of (Mostly) Western Animal Law: Part II*, 19 Animal L. 347, 347 (2013). Indeed, Hawai'i has recognized criminal prohibitions against animal cruelty for well over a century. See *State v. Kaneakua*, 61 Haw. 136, 140 (1979) (observing the precursor to the state's modern animal-cruelty statute was enacted in 1884). In recent decades, the Legislature has strengthened these protections, including by creating the felony offense of first-degree animal cruelty, enhancing penalties for dog fighting and other forms of animal abuse, authorizing forfeiture and surrender of

¹⁰ <https://www.avma.org/resources-tools/reports-statistics/us-pet-ownership-statistics>

¹¹ See, e.g., *Kondaurov*, 629 S.E.2d at 187 (treating a pet as a child for allowing litigation damages “would amount to a sweeping change in the law . . . a subject properly left to legislative consideration”).

abused animals, criminalizing animal desertion, and extending protections to service and law-enforcement animals. See Haw. Rev. Stat. §§ 711-1108.5 to -1110.5. The Legislature has also enacted a comprehensive framework to protect endangered and threatened species, establish conservation and species-recovery programs, protect native fauna, and afford protections to iconic native species such as the monk seal and Hawaiian hawk. See Haw. Rev. Stat. §§ 195D-3 to -5.1.

Congress has additionally acted over the years to protect animals through federal laws, including going back to the “Twenty-Eight Hour Law” of 1873 to alleviate harsh conditions in the transportation of cattle and other farm animals. See Geoffrey S. Baker, *Humane Treatment of Farm Animals: Overview and Selected Issues*, No. 95-1175 ENR, Congr. Res. Serv. (1995), at 21. Early in the 20th century, Congress adopted the Lacey Act to combat illegal commercial hunting and preserve wild animals. See Robert S. Anderson, *The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 Pub. Land L. Rev. 27, 36-38 (1995). It has since set forth standards for handling livestock, see 7 U.S.C. §§ 1901 *et seq.*, and protecting animals through the Endangered Species Act and Preventing Animal Cruelty and Torture Act, among many others. See Henry Cohen, *Federal Animal Protection Statutes*, 1 Animal L. 143 (1995).

Of relevance here, Congress enacted the Animal Welfare Act in 1966 to regulate the treatment and care of animals in zoos and other environments. See 7 U.S.C. §§ 2131 *et seq.* Under this Act, the Secretary of Agriculture promulgated standards governing “the humane handling, care, [and] treatment . . . of animals by dealers, research facilities and exhibitors,” including zoos. 7 U.S.C. § 2143(a)(1). Zoos must also meet the standards set forth by the Association of Zoos & Aquariums (AZA) in order to be accredited. See *AZA Standards for Elephant Management & Care* (Revised July 2025).¹² These standards are reviewed regularly “to provide the highest quality of health and wellbeing for elephants” and “are written to focus on a results-based assessment” of whether elephants are receiving “optimal care” and “thriving.” *Id.* Some states, such as California, have enacted further restrictions on elephant treatment to curb potentially “abusive behavior towards [an] elephant.” Cal. Penal Code § 596.5. But even there, owning and keeping an elephant in a zoo is not considered “abusive behavior.” *Leider v. Lewis*, 394 P.3d 1055 (Cal. 2017) (denying injunctive relief even when a zoo treats an animal in ways that violate the state’s penal code).

In recent years, Congress and state legislatures have continually demonstrated their ability to advance animal welfare protections while maintaining the ownership structure. For example,

¹² https://assets.speakcdn.com/assets/2332/accred_standards.pdf

Hawai‘i permits the creation of trusts for the care of domestic animals, allowing owners to provide funds for the care of their animals should the pet survive the owner, *see* Haw. Rev. Stat. § 554D-408. Hawai‘i law and regulations likewise address issues involving the importation and use of animals, including restrictions on the importation of animals for circus purposes. *See* Haw. Code R. § 4-71-6.5. The Legislature has also enacted laws governing many aspects of owning livestock, companion animals, and research animals, among others, which it updates regularly.¹³ Throughout all these reforms, legislatures have never conveyed legal “personhood” on animals. In fact, some legislators have withdrawn their bills after learning of the negative impact that expanding those rights would have on animals’ welfare. *See* Julia C. Martinez, *Pet Bill Killed by House Sponsor; Move Outrages Senate Backer*, Denver Post, Feb. 16, 2003, at B1.

If NRP would like to change the legal system for animal ownership, it should turn to Congress and state legislatures so that all stakeholder interests can be properly considered. Writs of habeas corpus are not the appropriate vehicles for upending the human-animal legal system.

CONCLUSION

For these reasons, the Court should uphold the ruling below and deny the writ of habeas corpus sought by NRP in this case.

DATED: Honolulu, Hawai‘i, July 13, 2026.

/s/ Edward Gaus

EDWARD GAUS

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¹³ A listing of Hawai‘i laws pertaining to the protection and welfare of animals can be found at <https://www.animallaw.info/statutes/us/hawaii>.

SCWC-24-0000323

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

NONHUMAN RIGHTS PROJECT, INC. on
behalf of Mari and Vaigai, individuals,

Petitioner/Petitioner-Appellant,

v.

CITY AND COUNTY OF HONOLULU OF
ENTERPRISE SERVICES and its
DIRECTOR, DITA HOLIFIELD, and the
HONOLULU ZOO DIRECTOR, LINDA
SANTOS,

Respondents/Respondents-Appellees.

CAAP-24-0000323

(Petition for a Common Law Writ of Habeas
Corpus)

INTERMEDIATE COURT OF APPEALS

Hon. Keith J. Hiraoka (Presiding Judge)

Hon. Clyde J. Wadsworth (Associate Judge)

Hon. Kimberly T. Guidry (Associate Judge)

CERTIFICATE OF SERVICE

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