

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant.

Supreme Court No. 169351

Court of Appeals No. 369247

v

Menominee Circuit Court
LC No. 23-17621-AH

DEYOUNG FAMILY ZOO, LLC and
HAROLD L. DEYOUNG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S
MOTION FOR RECONSIDERATION

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Pursuant to MCR 7.311(G),¹ Plaintiff-Appellant, Nonhuman Rights Project, Inc. (“NhRP”), asks this Honorable Court to grant reconsideration of its July 17, 2026 denial order (“Denial Order”), and states the following in support:

Facts and procedural history

1. In its Denial Order, attached as Exhibit A, this Court denied NhRP’s Application for Leave to Appeal filed on November 28, 2025 (“Application”). Justice Elizabeth Welch issued a dissenting statement.

2. The Application sought leave to appeal the published opinion of *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, No. 369247, slip op at 14, 2025 WL 2957821 (October 17, 2025), which affirmed the summary dismissal of NhRP’s habeas corpus complaint on behalf of seven chimpanzees confined at the DeYoung Family Zoo (“DeYoung Prisoners”)—holding that “chimpanzees are not ‘persons’ eligible for habeas relief.”

3. “This case raises profound questions about bodily autonomy and whether the law should expand to offer protection to other living beings,” where “the law” in question is the common law.² Denial Order at 4 (Welch, J., dissenting). It seeks recognition of the DeYoung Prisoners’ common law right to bodily liberty protected by the Great Writ, and their release to an accredited sanctuary. The chimpanzees are suffering in an environment that unjustly deprives them of a life appropriate for their species, and the Denial Order, in all likelihood, leaves them with no further judicial recourse to challenge their harmful confinement.

4. Justice Welch stated she would have granted the Application for two reasons:

First, I question the Court of Appeals’ application of social contract theory and the concept of “despotic dominion[]” . . . to support its conclusion, as well as its application of our caselaw. Second, I would grant leave to appeal to explore whether the common law understanding of habeas relief should evolve in light of our more advanced understanding of the animal kingdom.

¹ Motions for reconsideration “are subject to the restrictions contained in MCR 2.119(F)(3).” MCR 7.311(G). “MCR 2.119(F)(3) explicitly refrains from ‘restricting the discretion of the court’ to grant reconsideration.” *Univ of Michigan Regents v Titan Ins Co*, 484 Mich 852, 853 (2009) (Weaver, J., concurring) (concurring in order granting reconsideration and leave to appeal).

² The common law refers to the “embodiment of principles and rules inspired by natural reason, an innate sense of justice, and the dictates of convenience.” *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 330 (1995) (cleaned up).

Id. at 1 (Welch, J., dissenting) (citation omitted).

Grounds for Reconsideration

5. This Court has the duty to ensure that precedential decisions affecting Michigan common law are not “out of harmony with the conditions of modern society” and do no “violence to our convictions and our principles.” *Montgomery v Stephan*, 359 Mich 33, 49 (1960). As “the principal steward of Michigan’s common law,” *Henry v Dow Chem Co*, 473 Mich 63, 83 (2005), this Court is thus responsible for its just and rational development. The Court must exercise “its corrective responsibility in the proper case.” *Placek v City of Sterling Hts*, 405 Mich 638, 657 (1979). *DeYoung Family Zoo* is such a case: allowing it to stand uncorrected is an abdication of that responsibility, and therefore the Denial Order was based on a “palpable error.” MCR 2.119(F)(3).³

6. The Application satisfied two independent grounds for appeal: the issues raised involve legal principles of major significance under MCR 7.305(B)(3), and the Decision of the Court of Appeals is clearly erroneous and will cause material injustice under MCR 7.305(B)(5)(a).⁴ These grounds necessarily implicate this Court’s fundamental obligation “to examine common-law doctrines in view of changes in society’s mores, institutions, and problems, and to alter those doctrines where necessary.” *Adkins v Thomas Solvent Co*, 440 Mich 293, 317 (1992). Indeed, this Court has long recognized not only its authority but its “duty[] to change the common law when change is required.” *People v Stevenson*, 416 Mich 383, 390 (1982) (citing cases). *See, e.g., Woodman ex rel Woodman v Kera LLC*, 486 Mich 228, 272–74 (2010) (Markman, J., separate opinion).

³ The term “palpable” in the rule has been defined as “[e]asily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest.” *Luckow v Luckow*, 291 Mich App 417, 426 (2011) (cleaned up). MCR 2.119(F)(3) provides that the party moving for reconsideration “must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” However, “[i]t is hard to give literal application to this language—for example, it would seem unlikely that the original losing party was ‘misled’ and irrelevant that the original winning party was misled.” *Brown v Northville Regional Psychiatric Hosp*, 153 Mich App 300, 309 (1986) (citation omitted).

⁴ Application, pp. 3–8.

7. Discharging that obligation means not allowing the Court of Appeals' egregiously flawed decision to stand as the common law of this state. *See Montgomery*, 359 Mich at 38 ("Our oath is to do justice, not to perpetuate error.").

8. As highlighted in Justice Welch's dissent, and discussed below, the central errors in *DeYoung Family Zoo* are (a) its reliance on Blackstone's notion of "despotic dominion," an archaic theological concept from a bygone era; and (b) its reliance on social contract theory, a philosophical theory concerning a fictional contract. These errors are especially significant because, as a published opinion, *DeYoung Family Zoo* constitutes an authoritative statement of Michigan common law.⁵ Published opinions should be well grounded in law, especially when the consequences of error, as here, are manifestly unjust. It is therefore imperative that this Court exercise its "corrective responsibility." *Placek*, 405 Mich at 657.

9. The jurisprudential implications of *DeYoung Family Zoo* extend beyond Michigan. In Hawai'i, the state's intermediate appellate court relied on it to support the conclusion that two elephants at the Honolulu Zoo are not "persons" for purposes of habeas corpus. *See Nonhuman Rights Project, Inc on behalf of Mari v City & Co of Honolulu*, 158 Hawai'i 15, at *2 (Jan. 28, 2026). That case is now before the Hawai'i Supreme Court, following a grant of certiorari in June 2026, where the high court is likely to consider the significance of *DeYoung Family Zoo* vis-à-vis Hawai'i's common law. In Pennsylvania, *DeYoung Family Zoo* was cited in briefing to support denying habeas relief to elephants confined at the Pittsburgh Zoo, in a case now pending on appeal before an intermediate appellate court. As courts throughout the country confront more habeas claims on behalf of nonhuman animals, they will likely look to the principles and reasoning in *DeYoung Family Zoo* for guidance.

10. Given the significance and egregiousness of the Court of Appeals' errors, and because this Court is principally responsible for the just and rational development of Michigan's common law, this Court should grant reconsideration.

11. Upon granting reconsideration, this Court should take up the issues raised in the Application and explore "whether our scientific understanding of chimpanzees should change our

⁵ "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(c)(2).

view of habeas relief,” Denial Order at 6 (Welch, J., dissenting); or remand the case to the Court of Appeals, with directions to reconsider its opinion and address the points in Justice Welch’s dissent.

A. Blackstone’s archaic theological concept of “despotic dominion” is not a sound foundation for Michigan common law in the twenty-first century.

12. *DeYoung Family Zoo* is grounded on “an eighteenth-century British jurist’s interpretation of the Book of Genesis”—specifically, Blackstone’s “despotic dominion” concept of property. Denial Order at 5 (Welch, J., dissenting). This theological concept is an anachronism; it is not a “sound foundation for Michigan common law in the twenty-first century.” *Id.* Courts should not apply it “to justify the subjugation of living beings.” *Id.*

13. In citing Blackstone, the Court of Appeals observed that under English common law, humans had a natural right—granted by “the Creator”—to pursue and subjugate wild animals. *DeYoung Family Zoo*, slip op at 11. This historical fact is legally significant because of “the general principle that the English common law remains in force in Michigan until it ‘expire[s] by [its] own limitation[] or [is] changed, amended, or repealed.’” *Id.* at 10 (citing Const. 1963 art. 3, § 7). Thus, in order for Michigan common law to recognize the DeYoung Prisoners as individuals with the common law right to bodily liberty (i.e., as “persons” for purposes of habeas relief), their common law legal status, grounded in Blackstone’s “despotic dominion” concept, must first change.

14. However, the Court of Appeals determined it could not change the chimpanzees’ legal status, given this Court’s decisions in *Sterling v Jackson*⁶ and *Ten Hopen v Walker*.⁷ *Id.* at 12–13. According to the court, those decisions “track” the common law understanding of wild animals as property, and are therefore dispositive authorities establishing the DeYoung Prisoners’ ineligibility for habeas relief. *Id.* at 12. Those authorities are not, in fact, dispositive. As Justice Welch explained: “Neither case concerns petitions for writs of habeas corpus. Nor does either case address whether animals held as property can ever be eligible for a writ of habeas corpus.” Denial Order at 6 (Welch, J., dissenting). The panel misapplied the case law.

⁶ 69 Mich 488, 496 (1888).

⁷ 96 Mich 236, 239 (1893).

15. Consequently, Blackstone's interpretation of Genesis 1 continues to underpin Michigan common law relating to the status of nonhuman animals. It is the rationale for why the DeYoung Prisoners lack the right to bodily liberty.⁸

16. Relying on scripture was egregious error. Fundamentally, Michigan common law cannot be legitimately grounded on an interpretation of a religious text.⁹ See *Charles Reinhart Co v Winiemko*, 444 Mich 579, 600 (1994) ("The rulings of this Court are legitimate only as long as they rely primarily on the application of *neutral principles* originating from [inter alia] . . . the common law.") (emphasis added). "Courts are not arbiters of scriptural interpretation," *Thomas v Review Bd of Indiana Employment Sec Div*, 450 US 707, 716 (1981), and yet Blackstone's reading of scripture has been accepted as part of Michigan common law. It also happens to be incorrect according to theological experts. See Denial Order at 5 (Welch, J., dissenting) ("[T]he word 'despotic' does not appear in Genesis 1; it was Blackstone's addition. And amici argue persuasively that there is widespread consensus among scholars and theologians that the meaning of 'dominion' as discussed in the Book of Genesis is about *care* for creation, rather than domination. In other words, many experts believe that Blackstone got this issue wrong.").

17. This Court has repudiated reliance on Blackstone's antiquated views, describing the "abundance" of cases following him and similar authorities as "a monument to blind adherence to worn-out precedent." *Montgomery*, 359 Mich at 41. In *Montgomery*, the Court abolished the inequitable doctrine that had long denied wives, but not husbands, the right to recover for loss of spousal consortium. *Id.* at 49. Women's inferior status under coverture—as described by Blackstone—was "the soil in which the doctrine took root," precluding their right to recovery at common law. *Id.* at 40. The question in *Montgomery* was "not whether such a right existed then but whether it exists today." *Id.* at 45. Rather than rely on "the ancient precedents," which are "out of harmony with the conditions of modern society" and "do violence to our convictions and our

⁸ Blackstone described the creation account in Genesis 1:28 as providing "the only true and solid foundation of man's dominion over external things." 2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, p. 3.

⁹ Scholars "commonly recognize that explicit reference to religious authority in a written opinion is problematic." Sanja Zgonjanin, *Quoting the Bible: The Use of Religious References in Judicial Decision-Making*, 9 NY City L Rev 31, 31 (2005).

principles,” the Court chose to “see the suffering” at issue. *Id.* at 49. It made a much-needed change to Michigan common law, compelled by the Court’s “oath” to do justice and not “perpetuate error.” *Id.* at 38.

18. If the Court is to remain faithful to that oath, it must do the same with respect to Blackstone’s archaic “despotic dominion” concept: repudiate it as a legitimate foundation for justifying the DeYoung Prisoners’ ineligibility for habeas relief.

B. Social contract theory cannot determine whether Michigan common law should evolve to recognize the DeYoung Prisoners’ common law right to bodily liberty.

19. Although the Court of Appeals determined it could not evolve the DeYoung Prisoners’ common law legal status, given this Court’s decisions in *Sterling* and *Walker*, the panel nevertheless concluded their status should not change. It did so based on social contract theory. *DeYoung Family Zoo*, slip op at 13. Relying on that theory, the panel held that a “central aspect of personhood is mankind’s capacity” to give up part of one’s natural liberty and conform to laws, in exchange for legal protections; and reasoned that because chimpanzees “are incapable of making this exchange,” they should not be recognized as “persons” eligible for habeas relief. *Id.* In other words, the panel held that chimpanzees lack the prerequisite for possessing the common law right to bodily liberty: the capacity to bear legal duties.

20. Reliance on social contract theory—a philosophical theory concerning a fictional contract¹⁰—was egregious error. Rather than conduct its analysis “upon a rational, understandable[] basis,” the court relied on “the metaphysical realm of fictions.” *Montgomery*, 359 Mich at 46.

21. The conception of personhood adopted by the Court of Appeals “denies legal rights not only to animals but to many humans.” Denial Order at 6 (Welch, J., dissenting). It therefore cannot be part of Michigan law, as Justice Welch explained:

In essence, under this rationale, any living being “incapable” of consciously giving up part of their liberty to oblige themselves to conform to society’s laws is neither a legal person nor a party eligible for a writ of habeas corpus. That logic must, of course, fail. Otherwise, human beings incapable of making decisions for themselves—due to age or infirmity—would be ineligible for writs of habeas corpus, and they would not be considered “persons” under the law.

¹⁰ Application, p. 30.

Id. That the fundamental rights of humans are not dependent on this duty-bearing capacity is an obvious objection to the panel’s reasoning, one made by judges addressing similar claims for habeas relief.¹¹ Application, p. 29.

22. Moreover, by relying on social contract theory, the Court of Appeals failed to undertake a proper common law analysis—in contravention of this Court’s precedents that address when the common law should evolve.¹² “[T]he common law can evolve over time and indeed has evolved with respect to habeas relief.” Denial Order at 4 (Welch, J., dissenting).

23. Among the central considerations in common law adjudication is determining whether circumstances have sufficiently changed to warrant altering court-created doctrines or rules. *See, e.g., Price v High Pointe Oil Co, Inc*, 493 Mich 238, 242–43 (2013). This is because the common law, by its nature, is not static but “adapts to changing circumstances.” *Id.* at 242. Changing circumstances include “new institutions, public policies, conditions, usages and practices,” as well as “changes in mores, trade, commerce, inventions, and increasing knowledge.” *Id.* at 243 (internal citation and quotation omitted). Particularly relevant here (explained below, ¶ 25), they also include advances in scientific understanding. *See Detroit City Ry v Mills*, 85 Mich 634, 650 (1891) (common law adapts itself to “the advance of science and civilization”); *Womack v Buchhorn*, 384 Mich 718, 725 (1971) (updating common law “[i]n the light of the present state of science”); *Stevenson*, 416 Mich at 392 (common law rule rendered obsolete by “advances of modern medical science”).

24. Additionally, considerations of justice are fundamental to a proper common law analysis, and are often related to how circumstances or conditions have changed over time. *See Montgomery*,

¹¹ The court, following Blackstone, understood the liberty right protected by habeas corpus as a *natural* right. Natural rights exist prior to the social contract—and thus even under Blackstone’s theory, the capacity to bear legal duties is not a prerequisite for possessing the right to bodily liberty. Application, pp. 31–32. “The court’s interpretation reverses the basic logic of the social-contract tradition and is unsupportable philosophically.” Amicus Brief of Gary Comstock, Peter Singer, and Adam Lerner at 4 (submitted February 18, 2026).

¹² Application, pp. 33–37.

359 Mich at 48–49 (rejecting, as a matter of justice, application of an outdated common-law rule).¹³ For example, in *Parker v Port Huron Hosp*, 361 Mich 1, 10 (1960), this Court applied the principle that deviation from an established rule is warranted where “changing conditions result in injustice by the application of an outmoded rule,” in a case abolishing the charity immunity rule. The Court emphasized that while the old common-law rule “was justified in its time, on its own facts,” today “we have a new set of facts.” *Id.* at 25. It concluded: “there is today no factual justification for immunity in a case such as this,” and “principles of law, logic and intrinsic justice demand that the mantle of immunity be withdrawn.” *Id.*

25. These considerations—not social contract theory—should have been applied by the Court of Appeals to determine the DeYoung Prisoners’ common law legal status. In concluding that Michigan common law should not evolve, the court failed to consider advances in our scientific understanding, in particular: the “considerable and seemingly undisputed scientific evidence that chimpanzees possess autonomy, self-determination, and numerous advanced cognitive abilities,” as well as the evidence that “chimpanzees appear unsuited for confinement.” Denial Order at 2 (Welch, J., dissenting). The panel also failed to consider the injustice of applying Blackstone’s “despotic dominion” concept to support the DeYoung Prisoners’ ineligibility for habeas relief.

26. Consequently, *DeYoung Family Zoo* is now precedential authority for the obviously inaccurate propositions that (a) the capacity to bear legal duties is a prerequisite for personhood, based on the misapplication of a philosophical theory; and (b) the considerations relevant to determining when Michigan common law should evolve need not be applied, despite this Court’s established precedents. These errors more than warrant this Court exercising its “corrective responsibility.” *Placek*, 405 Mich at 657.

C. Conclusion

27. *DeYoung Family Zoo* is a published opinion that constitutes an authoritative statement of Michigan common law despite being grounded on egregious errors. In light of those errors—

¹³ See also *Womack*, 384 Mich at 724 (recognizing “the duty to reexamine a question where justice demands it”) (citation omitted); *Garwols v Bankers Trust Co*, 251 Mich 420, 424 (1930) (the authority of common law rules depends on “the tendency of the rules to accomplish the ends of justice”) (citation omitted).

highlighted in Justice Welch's dissent, and discussed herein and in the Application—this Court should grant reconsideration.

WHEREFORE, Plaintiff-Appellant respectfully requests that this Honorable Court grant reconsideration of its Denial Order and either (i) grant NhRP's Application for Leave to Appeal or (ii) remand this case to the Court of Appeals, with directions for that court to reconsider its opinion and address the points raised in Justice Welch's dissent from the Denial Order.

Respectfully submitted,

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Dated: August 6, 2026

CERTIFICATE OF COMPLIANCE

I certify that Plaintiff-Appellant's Motion for Reconsideration complies with the requirements and word limitation set forth in MCR 7.311(G). According to the word-processing system used to produce this document, there are 3,180 words in this motion.

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EXHIBIT A

Order

Michigan Supreme Court
Lansing, Michigan

July 17, 2026

SC: 169351
COA: 369247
Menominee CC: 23-017621-AH

Megan K. Cavanagh
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood
Justices

NONHUMAN RIGHTS PROJECT, INC.,
Plaintiff-Appellant,

v

DEYOUNG FAMILY ZOO, LLC, and
HAROLD L. DEYOUNG,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the October 17, 2025 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*dissenting*).

Plaintiff Nonhuman Rights Project seeks a writ of habeas corpus on behalf of seven chimpanzees kept at defendant DeYoung Family Zoo (the DeYoung Chimpanzees). Plaintiff does *not* allege that chimpanzees are human beings. Instead, plaintiff asserts in its complaint that chimpanzees possess a common law right to bodily liberty, and that the DeYoung Chimpanzees' confinement at the Zoo denies them that right. For that reason, plaintiff asks the Court to order the DeYoung Chimpanzees released and relocated to a facility where they can, to the greatest extent possible, live as autonomous beings. The Court of Appeals held that chimpanzees are not persons, and that they are therefore not entitled to habeas relief. I would have granted plaintiff's application for two reasons. First, I question the Court of Appeals' application of social contract theory and the concept of "despotic dominion," *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, ___ Mich App ___, ___ (October 17, 2025) (Docket No. 369247); slip op at 11 (quotation marks omitted), to support its conclusion, as well as its application of our caselaw. Second, I would grant leave to appeal to explore whether the common law understanding of habeas relief should evolve in light of our more advanced understanding of the animal kingdom. As a result, I respectfully dissent from the Court's denial order.

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I. BACKGROUND

A. Chimpanzees' Advanced Cognitive and Emotional Capabilities

Plaintiff, its expert witnesses, and supporting amici present considerable and seemingly undisputed scientific evidence that chimpanzees possess autonomy, self-determination, and numerous advanced cognitive abilities.¹ The evidence demonstrates that chimpanzees are remarkably intelligent, that they are self-aware, that they plan for the future, that they exhibit empathy and compassion toward other living beings, and that they grieve the loss of loved ones.

Based on the evidence presented, chimpanzees appear unsuited for confinement. Consider, for example, the story that plaintiff presents in its application for leave to appeal about Bruno, a chimpanzee who was caged at a biomedical facility. Researchers had trained Bruno in American Sign Language (ASL). Using ASL, Dr. Mark Bodamer asked Bruno for his name, but instead of replying with his name, Bruno signed "KEY OUT." Bodamer described what happened next:

Bruno had signed KEY. He then signed again, pulling one hand out from the grasp of the other—the ASL sign for OUT. I signed NOT UNDERSTAND SIGN AGAIN. Bruno shifted his posture, orienting his body more directly toward me; raised his hands slightly, making it easier to see his signs; then signed again. This time both signs were very clear: OUT KEY OUT. I was spellbound. Bruno began to bob and then crouch by his cage door. He signed OUT OUT, bobbing and crouching even more excitedly. He continued to sign OUT several more times. Of all the phrases Bruno could have signed, he signed KEY OUT. I didn't think his message was by any means random. Bruno wanted out of his tiny cage.

I signed back CAN'T SORRY CAN'T. Bruno's shoulders dropped, and he walked to the back of his cage, crestfallen. . . . Bruno had directly asked me to free him, expressing emotions just like any human who had been wrongfully imprisoned, and I had to say no. [Quotation marks omitted.²]

¹ Among plaintiff's expert witnesses was the late primatologist Dr. Jane Goodall. Among the supporting amici are Martha Nussbaum, Ernst Freund Distinguished Service Professor of Law and Ethics at the University of Chicago, and Peter Singer, Ira W. DeCamp Professor of Bioethics, Emeritus, at Princeton University. The expert witnesses and amici provided a wealth of helpful information.

² See Rosenman, *The Chimpanzee Chronicles: Stories of Heartbreak and Hope from Behind the Bars* (Wild Soul Press, 2020).

It is against this conceptual backdrop that plaintiff based its complaint.

B. Procedural History

Plaintiff commenced this action by filing its complaint in the circuit court. Plaintiff alleges that the DeYoung Chimpanzees are confined in a manner that denies them the opportunity to exercise their autonomy and cognitive and emotional complexity. Supporting amicus Professor Martha Nussbaum opines that “[d]espite their fundamental need for social connection, tendency to roam in groups of 20 to 200, and need to interact with various social subgroups, the DeYoung Prisoners are limited to the small group of seven chimpanzees at [the Zoo]—if anyone at all.” And plaintiff alleges that the DeYoung Chimpanzees are housed indoors all winter without access to the fresh air and sunshine that they require.

Plaintiff and Professor Nussbaum also specifically highlight the story of Louie, a Chimpanzee at the Zoo, whom plaintiff alleges has lived alone for at least half his life. According to plaintiff and Professor Nussbaum, Louie was used as a prop in photo opportunities and made to interact with children and other zoo patrons, all the while chained to a leash. One of plaintiff’s expert witnesses explained that such conditions are “ ‘highly detrimental to [Louie’s] psychological well-being, mental health, growth, and development.’ ”

Plaintiff sought an order to show cause requiring defendants to justify their imprisonment of the DeYoung Chimpanzees. See MCL 600.4316; MCR 3.303(D). The ultimate relief plaintiff sought was for the circuit court to order that the DeYoung Chimpanzees be relocated to a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries. Such sanctuaries, plaintiff asserts, provide chimpanzees with a socially and physically rich environment that would satisfy the DeYoung Chimpanzees’ complex needs.

The circuit court denied relief, holding that the DeYoung Chimpanzees “are not persons as required by MCR 3.303” to be entitled to writs of habeas corpus. The Court of Appeals affirmed the trial court’s order. *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 14. In so doing, the panel held in a published opinion that chimpanzees are not persons eligible for a writ of habeas corpus.³ To support that holding, the Court of Appeals specifically relied upon William Blackstone’s conception of social contract theory and his

³ The panel also held that “an original action for habeas is not the exclusive means of bringing a trial court’s denial of habeas relief within [the Court of Appeals’] jurisdiction,” and that the Court of Appeals “has jurisdiction over an appeal of right from the denial of habeas relief.” *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 6-7. Neither party appeals those holdings.

view—rooted in his interpretation of the Book of Genesis—that because human beings exercise despotic dominion over nonhuman animals, nonhuman animals are property, not persons. *Id.* at ____; slip op at 11.

The panel then rejected plaintiff’s request to update the common law with respect to who—or what—is entitled to habeas relief. The panel explained that this Court, rather than the Court of Appeals, “is the ‘principal steward of Michigan’s common law,’ ” *id.*, quoting *Henry v Dow Chem Co*, 473 Mich 63, 83 (2005), and that any “‘significant departure from Michigan law’ ” should come from this Court, rather than a lower court, *Nonhuman Rights Project*, ____ Mich App at ____; slip op at 13, quoting *Teel v Meredith*, 284 Mich App 660, 666 (2009). Even if the Court of Appeals could update the common law, the panel wrote, it would have declined plaintiff’s request. *Nonhuman Rights Project*, ____ Mich App at ____; slip op at 13-14. Relying upon Blackstone’s and Thomas Hobbes’s conceptions of social contract theory, the panel opined that a chimpanzee is not a person because it is unable to enter into a social contract. *Id.* This application followed.

II. DISCUSSION

This case raises profound questions about bodily autonomy and whether the law should expand to offer protection to other living beings. I believe the Court of Appeals incorrectly relied upon Blackstone’s and Hobbes’s questionable applications of social contract theory to define “personhood.” I believe those views are antiquated, and we should not rely on them in our jurisprudence. Additionally, I question the panel’s application of our caselaw. Finally, because the common law can evolve over time and indeed has evolved with respect to habeas relief, and because our scientific understanding of the animal kingdom is constantly evolving, I believe that we should explore this issue further.

I believe that the Court of Appeals’ reliance on Blackstone to support its holding was flawed. The panel asserted that “Blackstone divided legal persons into ‘natural’ and ‘artificial[.]’ ” *Id.* at ____; slip op at 10 (citation omitted). According to Blackstone, the panel then explained, “ ‘Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.’ ” *Id.*, quoting 1 Blackstone, *Commentaries on the Laws of England*, p *123. The panel also noted that the rights of persons are either absolute or relative and that “ ‘absolute rights,’ ” including “ ‘natural liberty,’ ” belong only to “ ‘particular men.’ ”⁴ *Nonhuman Rights Project*, ____ Mich App at ____; slip op at 10 (citation omitted).

⁴ Blackstone’s binary of natural and artificial persons and his view that only particular men are entitled to absolute rights appear to be two separate concepts. It also bears mention

The panel then proceeded to examine Blackstone's definition of property. *Id.* at ____; slip op at 11. The panel wrote that "Blackstone defined property as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.' " *Id.*, quoting 2 Blackstone, Commentaries on the Laws of England, p *2. The panel then stated that Blackstone "invoked the creation narrative to reflect the period's understanding of the common law's categories":

In the beginning of the world, we are informed by holy writ, the all-bountiful Creator gave to man "dominion over all the earth; and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." . . . The earth, therefore, and all things therein, are the general property of all mankind, exclusive of other beings, from the immediate gift of the Creator. [*Nonhuman Rights Project*, ____ Mich App at ____; slip op at 11, quoting 2 Blackstone, pp **2-3 (quotation marks omitted; ellipsis in *Nonhuman Rights Project*).]

As a foundational matter, I question whether an eighteenth-century British jurist's interpretation of the Book of Genesis is a sound foundation for Michigan common law in the twenty-first century. Further, many scholars and theologians challenge Blackstone's interpretation of the relevant biblical text. As Professors Andrew Linzey, Clair Linzey, and Amanda Muskat note in their amicus brief, the word "despotic" does not appear in Genesis 1; it was Blackstone's addition. And amici argue persuasively that there is widespread consensus among scholars and theologians that the meaning of "dominion" as discussed in the Book of Genesis is about *care* for creation, rather than domination. In other words, many experts believe that Blackstone got this issue wrong. Finally, I do not believe that courts should apply the concept of "dominion" to justify the subjugation of living beings. Indeed, it is this very same concept that was used by the federal government to justify the conquest of Native American nations. See *Johnson v M'Intosh*, 21 US 543, 574 (1823). See also Fletcher, *Bizindan Miinawa (Listen Again)*, 23 Tribal L J 50, 61, 63 (2024).

I also disagree with the Court of Appeals' application of our caselaw. To support its holding, the panel relied upon two non-habeas cases from the nineteenth century. The panel asserted that *Sterling v Jackson*, 69 Mich 488, 496 (1888), supported its conclusion that chimpanzees cannot be persons because *Sterling* held that " 'by the law of nature every man, of whatever rank or station, has an equal right of taking, for his own use, all creatures fit for food that are wild by nature, so long as he does no injury to another's rights.' " *Nonhuman Rights Project*, ____ Mich App at ____; slip op at 12, quoting *Sterling*, 69 Mich at 496. Acknowledging that *Sterling*'s holding was limited to animals " 'fit for food,' " the

that at the time Blackstone wrote, "particular men" did not necessarily refer to enslaved people, women, Indigenous peoples, and others.

panel then quoted *Ten Hopen v Walker*, 96 Mich 236, 239 (1893), which held that “ ‘dogs . . . are the property of the owner, as much as any other animal which one may have or keep.’ ” *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 12, quoting *Ten Hopen*, 96 Mich at 239. But *Sterling* and *Ten Hopen* merely define how humans can possess wild and domesticated animals. Neither case concerns petitions for writs of habeas corpus. Nor does either case address whether animals held as property can ever be eligible for a writ of habeas corpus. Accordingly, I do not believe they are dispositive.

Finally, I question the panel’s application of social contract theory to explain why this Court should not update the common law. Relying on the philosophies of Blackstone and Hobbes, the panel asserted 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.’ ” *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 13, quoting 1 Blackstone, p *125 (alterations in *Nonhuman Rights Project*). And, the panel reasoned, because “[c]himpanzees—and nonhuman animals generally—are incapable of making this exchange,” they are not entitled to writs of habeas corpus. *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 13.

But as one group of amici—Professor Gary Comstock, Professor Peter Singer, and Dr. Adam Lerner—explain, no “classical social contract theorist . . . ever claimed that basic rights arise from the ability to bear duties.” To the contrary, amici argue, philosophers such as Locke and Rousseau argued “that individuals possess natural rights prior to the formation of civil society and that governments exist to protect those rights.” See, e.g., Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government* (Wheeling: Harlan Davidson, Inc, 1982), §§ 4–6.

As Comstock, Singer, and Lerner note, Hobbes himself realized that his reasoning—which the Court of Appeals adopted in this case—denies legal rights not only to animals but to many humans. In essence, under this rationale, any living being “incapable” of consciously giving up part of their liberty to oblige themselves to conform to society’s laws is neither a legal person nor a party eligible for a writ of habeas corpus. That logic must, of course, fail. Otherwise, human beings incapable of making decisions for themselves—due to age or infirmity—would be ineligible for writs of habeas corpus, and they would not be considered “persons” under the law.

In conclusion, the Court of Appeals explained correctly that this Court is the “ ‘principal steward of Michigan’s common law.’ ” *Nonhuman Rights Project*, ___ Mich App at ___; slip op at 13, quoting *Henry*, 473 Mich at 83. Rather than rely on Blackstone, the Book of Genesis, Hobbes, and social contract theory, I would have taken up the issues raised by plaintiff and explored whether our scientific understanding of chimpanzees should change our view of habeas relief.

III. CONCLUSION

Plaintiff and amici present considerable evidence that chimpanzees can think, feel, love, grieve, and yearn. In light of that evidence, “[e]fforts to extend legal rights to chimpanzees are . . . understandable[.]” *In re Nonhuman Rights Project, Inc v Stanley*, 49 Misc 3d 746, 772 (NY, 2015). Someday, the effort to extend rights to chimpanzees may succeed. See *id.* at 772-773. Human history has seen various examples of human beings expanding their circle of moral concern. See generally Singer, *The Expanding Circle: Ethics, Evolution, and Moral Progress* (New York: Farrar, Straus & Giroux, 1st ed, 1981). And the United States Supreme Court has explained that “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.” *Lawrence v Texas*, 539 US 558, 579 (2003).

Although this Court denies leave today, our Legislature can always reconsider its animal welfare laws—including the laws concerning the confinement of chimpanzees.

I respectfully dissent.



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I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 17, 2026

Clerk