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NO. SCWC-24-0000323

IN THE SUPREME COURT OF THE STATE OF HAWAII

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

Petitioner/Appellant,

vs.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, JOHN BERRY,

Respondents/Appellees.

ON APPLICATION FOR WRIT OF
CERTIORARI TO THE INTERMEDIATE
COURT OF APPEALS

APPEAL FROM THE JUDGMENT ON
APPEAL FILED IN CAAP-24-0000323
[DKT. 67] ON FEBRUARY 26, 2026

INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII

HONORABLE KEITH K. HIRAOKA
Presiding Judge

HONORABLE CLYDE J. WADSWORTH
Associate Judge

HONORABLE KIMBERLY T. GUIDRY
Associate Judge



**RESPONDENTS/APPELLEES CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR,
JOHN BERRY'S RESPONSE TO ANIMAL LAW SECTION OF THE
LOS ANGELES COUNTY BAR ASSOCIATION'S *AMICUS CURIAE* BRIEF**

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DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR,
JOHN BERRY’S RESPONSE TO ANIMAL LAW SECTION OF THE
LOS ANGELES COUNTY BAR ASSOCIATION’S *AMICUS CURIAE* BRIEF**

I. INTRODUCTION

As with other amici, the Animal Law Section of the Los Angeles County Bar Association (“Amicus”) asks that the Court disregard controlling statute, HRS Chapter 660, to extend common law habeas protections to certain nonhuman animals that meet vague and subjective criteria for “personhood.” The right to habeas corpus originated with human prisoners, and no U.S. court has ever extended that right to nonhuman animals, much less held that animals have an interest in bodily liberty. Granting habeas rights to nonhuman animals would not represent an evolution of common law to conform to changing norms, as Amicus claims, but a seismic shift that would fundamentally alter the longstanding relationship between humans and nonhumans that is based on the concept of nonhuman animals as property. This concept is the foundation for laws governing animals, from husbandry, medical research, and exhibition, to pet ownership.

Amicus challenges the Intermediate Court of Appeals (“ICA”)’s *Summary Disposition Order* (“Order”) on the following grounds: (1) habeas corpus is a common law remedy that should evolve to “enhance liberty when a captivity is unjust”; (2) scientific evidence establishes elephants are autonomous, cognitively complex beings; (3) the ICA erred in holding that only beings capable of bearing legal duties may hold legal rights; and (4) this Court is obligated to develop the State’s common law consistent with evolving social norms, as reflected in four international judicial decisions that Amicus claims recognize habeas protection for cognitively complex animals.

Amicus’s “jurisprudential” arguments have no legal basis. First, the Hawai‘i Constitution empowers the legislature to regulate substantive habeas rights through statute. In this case, HRS

Chapter 660 superseded common law habeas relief when it was enacted. Second, even assuming *arguendo* that there remains a common law right to habeas relief, there is no legal authority for the proposition that certain nonhuman animals have a protectable liberty interest due to their level of autonomy and cognition. Both English common law and Hawai‘i law do not treat nonhuman animals as “persons” with protectable liberty rights. Third, the ICA did not even address “personhood” using the “rights and duties framework.” In any event, nonhuman animals have no duties and therefore have no rights under the law. Laws protecting nonhuman animals regulate human conduct vis à vis nonhumans; they do not give nonhuman animals rights that they can vindicate. Finally, there is no basis for the Court to extend common law habeas to nonhuman animals where no U.S. court has done so, and where no U.S. court has held that nonhuman animals have a liberty interest, much less one that they can sue to protect.¹

The City respectfully requests that the Court reject Amicus’s arguments and affirm the ICA’s Order. This case presents policy issues of significant magnitude where a ruling in favor of Petitioner would result in a slippery slope for which it and its amici offer no defined guardrails. Issues regarding the confinement of nonhuman animals should therefore be left to the legislature, particularly where there is no claim of legislative inertia.

¹ The City requests that the Court consider new legal arguments it makes in response to the new arguments raised by Amicus. This Court has held that appellate courts have discretion to hear new legal arguments when justice requires. *See Fujioka v. Kam*, 55 Haw. 7, 9–10, 514 P.2d 568, 570 (1973) (considering an issue raised for the first time before the court where the trial court rendered its judgment on a motion for summary judgment, there were no material facts in issue, the resolution of the constitutional issue did not require additional facts, and the constitutionality of the statute is of great public import). The issue presented on appeal raises a purely legal question, to wit, whether elephants have a right to habeas relief. No additional facts are required to resolve this issue, resolution of the issue will not affect the trial court’s findings of fact, and the matter is of great importance.

II. DISCUSSION

A. HRS Chapter 660 Supersedes Habeas Common Law and Protects Humans.

Amicus contends that HRS Chapter 660 merely governs procedural habeas rights, and therefore this Court may extend the substantive common law right to habeas relief to nonhuman animals pursuant to *Brown v. Goto*, 16 Haw. 263 (1904). As Amicus notes, *Brown* held that “[u]ndoubtedly the right to the writ could not be taken away by statute.” See Dkt. 63 at 7.

The City does not disagree: HRS Chapter 660 could not and did not take away any substantive right to the writ. As the ICA correctly noted, when Chapter 660 was enacted, English law applied to writs of habeas corpus. *In re Apuna*, 6 Haw. 732, 732 (Haw. King. 1869) (holding that “[r]ights of persons in this Kingdom, under Writs of Habeas Corpus, are as fully secured by Constitutional and Statutory provisions as if the enactments of English law in this respect were spread on our statute books”). English common law at the time confined the category of “persons” to human beings. *Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC*, No. 369247, 2025 WL 2957821, *8 (Ct. App. Mich. Oct. 17, 2025), *appeal denied*, 37 N.W.3d 109 (Mich. 2026), *recons. denied*, No. 169351, 2026 WL 2793520 (Mich. Sept. 17, 2026). Chapter 660, which also does not apply to nonhuman animals, therefore superseded the common law by providing complete habeas relief to human beings. See HRS § 1-1 (2009) (declaring the common law of England to be the common law of Hawai‘i “except as otherwise expressly provided by . . . the laws of the State”); *Priceline.com, Inc. v. Dir. of Tax’n*, 144 Hawai‘i 72, 82, 436 P.3d 1155, 1165 (2019) (“common law may generally be overridden by statute”); *Herring v. Gulick*, 5 Haw. 57, 58 (Haw. Kingdom 1883) (“when the remedy provided by statute is complete, the common law remedy is superseded by the statute”).

B. Amicus’s Proposed Criteria for “Personhood” Has No Basis in the Law.

Amicus argues that elephants are “autonomous and extraordinarily cognitively complex beings.” Dkt. 63 at 8. No legal authority, however, holds that autonomy and cognition are the criteria that make some nonhuman animals “persons” with a right to bodily liberty. Nor is there a legal basis for privileging those characteristics over other characteristics.

Instead, legal authority establishes that “[h]abeas protections flow from the status of being a person, not from a being’s ability to pass some type of autonomous capacity test.”

Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y, 562 P.3d 63, 70 (Colo. 2025). As the court in *Breheny* held:

The 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. Rather, the great writ protects the right to liberty of humans because they are humans with certain fundamental liberty rights recognized by law.

Nonhuman Rights Project, Inc. v. Breheny, 197 N.E.3d 921, 927 (Ct. App. N.Y. 2022) (emphasis added). For instance, corporations are “persons” with non-personal constitutional rights because “[a] corporation is simply a form of organization used by human beings to achieve desired ends. . . . When rights . . . are extended to corporations, the purpose is to protect the rights of these people.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706–07 (2014).

Moreover, the law generally treats all nonhuman animals, regardless of their autonomy or cognition, as property. “Persons seeking a writ of habeas corpus must establish more than just confinement to justify its issuance; they must show that their confinement is illegal.” *Breheny*, 197 N.E.3d at 927. That humans exercise dominion over nonhuman animals is a tenet that traces back to English common law, which jurist William Blackstone explains as follows:

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. . . . “[A]ll mankind had by the original grant of the Creator a right to pursue and take any fowl or insect of the air, any fish or inhabitant of the waters, and any beast or reptile of the field: and this natural right still continues in every individual, unless where it is restrained by the civil laws of the country.”

DeYoung Fam. Zoo, LLC, 2025 WL 2957821, at *8–9 (emphasis added). Hawai‘i law reinforces this belief by treating nonhuman animals as property. *See* HRS § 1-1; *Miller v. Collins*, 158 Hawai‘i 435, 438, 593 P.3d 374, 377 (2026) (“A dog is personal property”); HRS § 142-44 (wild cattle, horses, mules, donkeys, sheep, goats, and swine are the property of the owners or lessees of the lands on which they are running wild); HRS § 183D-61 (authorizing the taking of certain animals for scientific and educational purposes); Haw. Admin. R. § 4-71-6.5, Part A (listing nonhuman animals that are subject to research and exhibition)²; Haw. Const. Art. XI, § 1 (wildlife held in trust by the State for the benefit of the people). “These statutory distinctions reflect the abiding view that nonhuman animals are not persons with a common-law right to liberty that may be secured through a writ of habeas corpus.” *Breheny*, 197 N.E.3d at 932.

C. Nonhuman Animals Enjoy No Legal Rights Because They Bear No Legal Duties.

1. Nonhuman Animals Have No Duties and therefore, No Rights Under the “Social Contract” Principle.

Amicus argues that the ICA erred in holding that only beings being capable of bearing legal duties may hold legal rights, pursuant to the New York Court of Appeals’ decision in *Breheny*. Dkt. 63 at 8–9. The ICA made no such holding. In any event, *Breheny* did not err in ruling that “legal personhood is often connected with the capacity, not just to benefit from the

² Although nonhumans are treated as property, the law governs their welfare. *See, e.g.*, the Animal Welfare Act, 7 U.S.C. §§ 2131, *et seq.* (humane care and protections for animals for exhibition); HRS §§ 711-1109, *et seq.* (criminal offense of cruelty to animals); and HRS § 471-18 (mandatory reporting by veterinarians of suspected animal cruelty).

provision of legal rights, but also to assume legal duties and social responsibilities.” *Breheny*, 197 N.E.3d at 928 (citing cases).

The “social compact” basis for legal personhood dates back to English common law. According to Blackstone, “every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish.” *DeYoung Fam. Zoo, LLC*, 2025 WL 2957821, at *8–9. “Our society and government are based on the ideal of moral agents coming together to create a system of rules that entail both rights and duties. Being . . . subject to legal duties and bearing rights are foundations of our legal system because they are foundations of our entire form of government.” *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839, 845 (Ct. App. Conn. 2019) (citation omitted). Because nonhuman animals cannot assume legal duties, regardless of their autonomy or cognition, they do not have legal personhood.

2. Habeas Rights for Enslaved Persons, Women, and Children Are Not Analogous.

Amicus urges this Court to extend the right to habeas relief to nonhuman animals as courts have done for enslaved persons, women, and children, “who lacked full legal personhood under the prevailing law at the time.” Dkt. 63 at 9. However, enslaved persons, women, and children were granted habeas rights, not because they passed a test for “personhood” based on their autonomy and intellectual capacity, but because they were “persons.” See *Breheny*, 197 N.E.3d at 928 (conclusion “that the logical progression of our common law runs from extending habeas to ‘abused women and children and enslaved persons’ to granting an elephant the right to bring a habeas proceeding, an odious comparison with concerning implications”).

Enslaved persons were granted habeas relief in *Somerset* and *Lemmon* because the laws of those jurisdictions (England and the State of New York) did not recognize slavery and

therefore, petitioners were entitled to habeas relief because they were persons. *See Lemmon v. People*, 20 N.Y. 562 (1860) (finding that eight enslaved persons became free upon arrival to New York); *Somerset v. Stewart* (1772) 98 Eng. Rep. 499; 12 Geo. 3 (KB) (finding that a person could not be deported from England because England did not recognize slavery within its jurisdiction); *see also DeYoung Fam. Zoo, LLC*, 2025 WL 2957821, at *10 (noting that slaves were deemed “persons” but treated as property). Likewise, women and children detained by their husbands and fathers were granted habeas relief because they were human beings entitled to liberty, and their detention was unlawful. *See Breheny*, 197 N.E.3d at 946 (Wilson, J., dissenting) (“the writ allowed courts to assess each case individually and whether the confinement was unjust based on fairness and a balancing of interests”).

Nonhuman animals are not eligible for habeas relief because they do not possess a protectable interest in bodily liberty. They are not analogous to enslaved persons, women, or children, who although once treated as property, were human beings.

3. There Is No Basis for Extending Habeas Common Law to Nonhuman Animals.

Amicus urges the Court to disregard the lack of precedent or persuasive authority to extend common law habeas rights to nonhuman animals to conform to changes in the “social needs of the community.” Dkt. 63 at 11. There is no legal basis for this Court to do so.

First, “[j]udicial law-making does not mean that judges may roam at will on a frolic of their own.” *Lum v. Fullaway*, 42 Haw. 500, 504 (1958). Judicial law-making contemplates “orderly growth.” *Id.* at 502. Here, Amicus’s request to extend habeas relief to certain nonhumans would not constitute the orderly growth of common law:

[G]ranting legal personhood and attendant liberty rights to . . . an elephant, would not be an incremental step in the slow process of decisional accretion regarding the scope and flexibility of the writ of habeas but a sweeping pronouncement[] of nonhuman animal personhood lacking in legal foundation that would displace the carefully devised state and federal statutory frameworks governing animal

welfare. Thus, while this litigation may invite consideration by others of questions that are the appropriate subject of ethical, moral, religious, and philosophical debate, the legal issue presented is straightforward. The use of habeas corpus as a vehicle to extend legal personhood beyond living humans is not a matter for the courts.

Breheny, 197 N.E.3d at 932 (cleaned up).

Second, judicial law-making requires “extract[ing] from the precedents the underlying principle, the *ratio decidendi*,” and then “determin[ing] the path or direction along which the principle is to move and develop”; and applying “justice and sound reason” “not inconsistent with settled authorities.” *Id.* at 502; *Welsh v. Campbell*, 41 Haw. 106, 121 (1955).

There is no judicial precedent, principle, or other legal authority for a sweeping expansion of habeas common law to nonhuman animals. All trial and appellate courts that have addressed the issue to date have rejected the same arguments being made by Amicus. There is also no underlying principle for extending habeas relief to nonhuman animals. No law has recognized a nonhuman animal’s right to bodily liberty or the legal personhood of a nonhuman species, and there is no case “in which a nonhuman animal, or a representative for that animal, has been permitted to bring a lawsuit to vindicate the animal’s own purported rights.” *See R.W. Commerford & Sons, Inc.*, 216 A.3d at 844.³ *Cf. Baehr v. Lewin*, 74 Hawai‘i 530, 582, 852 P.2d

³ The four international cases that Amicus relies upon to claim habeas rights for animals should be disregarded. They are hardly persuasive when viewed in the context of HRS chapter 660, the opinions of every other appellate court in the United States to have addressed the issue of habeas rights for nonhuman animals, and Hawai‘i law itself, which deems animals to be personal property regardless of their intelligence. *See* discussion *supra*. Moreover, this Court has held that international law may be considered only for principles “concerned with international rights and duties and not with domestic rights and duties.” *State v. Marley*, 54 Haw. 450, 467–68, 509 P.2d 1095, 1107 (1973) (citation omitted). International law takes precedence over state statutes only in limited circumstances not applicable here. *See id.* These cases are also distinguishable. The opinions from Pakistan and India address animal welfare, not habeas relief. *See Islamabad Wildlife Mgmt. Bd. v. Metro. Corp., Islamabad*, W.P. No. 1155/2019 PLD (2021) and *Animal Welfare Bd. of India v. A. Nagaraja*, 7 SCC 547 (2014) (finding violations of Pakistan’s and India’s Prevention of Cruelty to Animals Act, respectively). The opinion from Ecuador was grounded in Ecuador’s constitutional “rights of Nature.” *Rights of Nature and animals as subjects of rights, Estrellita Monkey Case*, No. 253-20-JH (Quito, Ecuador, Ecuador Const. Ct.

44, 68 (1993), *clarified on recons.* (May 27, 1993), *abrogated by Obergefell v. Hodges*, 576 U.S. 644 (2015) (holding that the court was not engaging in judicial legislation where “[t]he result we reach today is in complete harmony with the *Loving* Court’s observation that any state’s powers to regulate marriage are subject to the constraints imposed by the constitutional right to the equal protection of the laws”). Instead, the law has treated nonhumans as property. *See* discussion, *supra* at Section II.B. Finally, there is no legal authority for Amicus’s criteria for “personhood.” *See Cheyenne Mountain Zoological Soc’y*, 562 P.3d at 70.

Third, the Court may not “evaluate the wisdom of legislative action.” *Bissen v. Fujii*, 51 Haw. 636, 638–39, 466 P.2d 429, 431–32 (1970).

[The Court is] not at liberty to interpret a statutory provision to further a policy that is not articulated in either the language of the statute or the relevant legislative history, even if we believe that such an interpretation would produce a more beneficent result, for “[t]he Court’s function in the application and interpretation of such laws must be carefully limited to avoid encroaching on the power of [the legislature] to determine policies and make laws to carry them out.” When a court goes beyond the articulated purposes underlying statutory or constitutional provisions and imposes its own view of appropriate public policy, that court improperly engages in judicial legislation.

Ross v. Stouffer Hotel Co. (Hawai‘i) Ltd., 76 Hawai‘i 454, 467, 879 P.2d 1037, 1050 (1994),

(Klein, J., concurring and dissenting, Moon, C.J., joining) (citation omitted); *see also*

Washington v. Fireman’s Fund Ins. Cos., 68 Haw. 192, 200–01, 708 P.2d 129, 135 (1985)

(“[T]he power to decide what the policy of the law shall be resides with the legislature; and if it has intimated its will, . . . that will should be recognized and obeyed”) (internal quotations and citation omitted). In enacting HRS Chapter 660, the legislature decided that habeas rights should not be extended to nonhuman animals. The Court should not disturb the legislature’s will.

2022). The Argentine opinion held that habeas corpus action was necessary where the law did not contemplate a procedure to evaluate animals held in captivity contrary to their basic needs or natural habitat. *See* About the Chimpanzee “Cecilia” – Non human Individual, File No. P.72.254/15 (Third Court of Guarantees, Mendoza, Argentina (November 3, 2016)).

Finally, “although courts, at times, in arriving at decisions have taken into consideration social needs and policy, it is the paramount role of the legislature as a coordinate branch of our government to meet the needs and demands of changing times and legislate accordingly.” *Bissen*, 466 P.2d at 431; *see also TMJ Haw., Inc. v. Nippon Tr. Bank*, 113 Hawai‘i 373, 384, 384 n.6, 153 P.3d 444, 455, 455 n.6 (2007) (holding that the legislature is best suited to assess policy decisions of magnitude); *Hyatt Corp. v. Honolulu Liquor Comm’n*, 738 P.2d 1205, 1208 (1987) (holding that “important choices of social policy” must be made by the legislature, “the branch of our Government most responsive to popular will”) (citation omitted). The recognition of elephants as “persons” for purposes of habeas corpus essentially would require the “upend[ing of] this state’s legal system to allow highly intelligent, if not all, nonhuman animals the right to bring suit in a court of law.” *R.W. Commerford & Sons, Inc.*, 216 A.3d at 844. This decision should be made by the legislature.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court reject Amicus’s arguments and affirm the ICA’s Order.

DATED: Honolulu, Hawai‘i, September 21, 2026.

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Presiding Judge

HONORABLE CLYDE J. WADSWORTH
Associate Judge

HONORABLE KIMBERLY T. GUIDRY
Associate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon the following parties via electronic filing in the Judiciary Electronic Filing and Service System (JEFS), or via U.S. Mail, postage prepaid, as indicated on the date below:

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