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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 LAW PROFESSORS'
AMICUS CURIAE BRIEF**

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AMICUS CURIAE BRIEF**

I. INTRODUCTION

Amicus curiae (“Amici”)¹’s wide-ranging and theoretical arguments asserting animal personhood diverge and distract from the actual legal question before this Court: whether Mari and Vaigai are “persons” entitled to habeas relief.² The Amici contend that (1) HRS chapter 660 (application of which they concede “likely dooms”³ their case) does not supersede common law; and (2) common law enables this Court to extend the right to habeas relief to nonhumans with an interest in liberty. This argument is erroneous. The legislature clearly abrogated the common law with the passage of HRS chapter 660, which provides comprehensive habeas relief.

¹ Matthew Liebman, Zsea Bowmani, Taimie L. Bryant, David N. Cassuto, Luis E. Chiesa, Michael C. Dorf, David S. Favre, Pamela D. Frasch, Iselin M. Gambert, Sue Grebeldinger, Kathy Hessler, Justin Marceau, Russ Mead, Rajesh K. Reddy, Jessica Rubin, Joan Schaffner, Sarah Schindler, Kristen A. Stilt, Laurence H. Tribe, and Delcianna Winders. The Amici did not file an *amicus curiae* brief when this case was before the Intermediate Court of Appeals (“ICA”).

² The Amici also raise for the first time the “Social Contract Theory” argument, and then ask the Court to disregard this theory. *See* Dkt. 58 at 9–11. It is well-established that an *amicus curiae* must accept the case before the reviewing court as it stands on appeal, with the issues as framed by the parties, and may not introduce new issues. *State v. Palama*, 136 Hawai‘i 543, 364 P.3d 251 (Ct. App. 2015) (SDO) (“[A]n *amicus curiae* generally cannot raise issues that have not been preserved by the parties.”). The Social Contract Theory was not relied upon by any party in any court below in this appeal. Thus, the Court should disregard the Amici’s arguments regarding the Social Contract Theory. *See Palama*, 136 Hawai‘i at 543, 364 P.3d at 25. Assuming *arguendo* that the Court could consider this argument, the Social Contract Theory is just that — theory — so unnecessary to show that elephants are not entitled to habeas relief under the law. As substantiated in this response, HRS chapter 660 provides comprehensive habeas relief so there is no need to rely upon the Social Contract Theory to justify the law. The Amici fail to establish a legal basis for their foundational claim that nonhumans have a liberty interest because there is no judicial precedent establishing this underlying principle. Accordingly, this Court should find that only humans have a right to habeas relief.

³ Dkt. 58 at 7. All citations are to the PDF page number of the docket.

Even if there was room to apply common law principles, the Amici fail to cite to any Hawai‘i law that would permit the Court to expand habeas rights to nonhumans through jurisprudence. It is one thing for courts to develop the common law based on evolving underlying principles discerned from cases. *See* Dkt. 58 at 5. But that is not what the Amici is arguing. They contend that: (1) nonhumans that possess human traits have the same liberty interest in humans that should be protected through writs of habeas corpus; and (2) animals (not just animals with human traits) that have legal rights are “persons” under the common law of habeas corpus. These arguments are not based on underlying principles extracted from precedent because existing laws do not recognize anything close to a liberty interest in animals.

Finally, there are significant ramifications should the Court hold that nonhumans have a liberty interest based on their human-like traits, or that animals have a liberty interest if they have protections under the law. Such a ruling could impact every existing animal in confinement and the humans who confine them. This only compels the conclusion that the matters of animal liberty and the enjoyment of habeas protections should be raised with the legislature — not our courts and not through an interpretation of habeas corpus.

For the foregoing reasons, the City⁴ respectfully requests that the Court reject Amici’s arguments and affirm the ICA’s Order.

II. DISCUSSION

A. HRS Chapter 660 is an Example of a Statutory Framework Superseding the Common Law in Hawai‘i.

The Amici argue that the ICA erred in holding that HRS Chapter 660 supersedes the habeas common law because, pursuant to HRS § 1-1, the common law applies unless “otherwise

⁴ Respondents/Appellees City and County of Honolulu Department of Enterprise Services and its Director, Dita Holifield, and the Honolulu Zoo Director, John Berry (collectively, “City”).

expressly provided” by state law. Dkt. 58 at 7. The Amici interpret “expressly provided” to mean that a statute must expressly state that it supersedes common law. *See id.* at 8 (“Nowhere does the legislation purport to eliminate, abolish, abrogate, supplant, or override the common law writ of habeas corpus; it does not use those terms, nor does it accomplish those ends.”). This is incorrect.

To the contrary, the legislature expressly repudiates the common law when it enacts a law that must, by its occupation of the entire field, supersede the common law. As this Court held in *Herring v. Gulick*, 5 Haw. 57, 58 (Haw. Kingdom 1883), “[a] complete statutory remedy supersedes the common law remedy. In such case the statutory remedy is not merely cumulative upon the common law action, but an entire substitution for it, and must be exclusively pursued[.]” *Id.* (internal citations omitted). For example, in *Pogoso v. Sarae*, the Court held that HRS § 291C-65(b) superseded the common law doctrine of conditional privilege, despite the absence of any statutory provision expressly stating that it supersedes the common law. 138 Hawai‘i 518, 523, 382 P.3d 330, 335 (2016) (“Because HRS § 291C–26 evinces the Legislature’s clear purpose to establish the standards applicable to Sarae’s conduct in this case, HRS § 291C–26 trumps any common law conditional privilege that might otherwise apply”).

In fact, the legislature has done the opposite by expressly protecting the *common law* notwithstanding an overlapping statute. *See, e.g.*, HRS § 378-69 (with regard to Hawai‘i’s whistleblower protection statute, providing that “[t]he rights created herein shall not be construed to limit the development of the common law nor to preempt the common law rights and remedies on the subject matter of discharges which are contrary to public policy”). “In order to abrogate a common-law principle, the statute must speak directly to the question addressed by the common law[.]” *Gold Coast Neighborhood Ass’n v. State*, 140 Hawai‘i 437, 452, 403 P.3d 214, 229

(2017) (quoting *United States v. Texas*, 507 U.S. 529, 534 (1993) (internal quotations omitted)).

The Hawai‘i Legislature has completely codified habeas relief through HRS chapter 660, and therefore, the statutory framework supersedes the common law writ of habeas corpus.

Gold Coast proves the point. In that case, the State argued that various statutes together superseded the common law doctrine of implied dedication. 140 Hawai‘i at 457, 403 P.3d at 234. The statutes at issue in *Gold Coast* created mechanisms for real property interest transfers to the State of Hawai‘i, but they did not completely substitute for the common law doctrine of implied dedication. *Id.* at 457, 403 P.3d at 234. This Court rejected that argument and held that a “combination of disparate provisions of the [HRS]” did not demonstrate the legislature’s intent to replace the common law doctrine of implied dedication. *Id.* at 456–57, 403 P.3d at 233–34. (“Further, that the State is required to rely on a combination of disparate provisions of the [HRS] exposes an important point: none of the provisions relied upon provide for the abrogation of Hawaii’s common law doctrine of implied dedication or *evinced express legislative intent to do so*. Even combined, the statutes cited by the State do not support an implicit abolishment of common law implied dedication.”). Unlike the statutes in *Gold Coast*, Chapter 660 mirrors the relief provided under common law, therefore supersedes it.

Finally, the Amici argue that HRS chapter 660 does not provide complete relief because it is merely procedural and does not address substantive habeas rights. Yet, “[a]n application for a writ of habeas corpus is a procedural vehicle for challenging the legality of a person’s confinement.” *Ex parte Poest*, No. 09-24-00072-CV, 2024 WL 3199146, at *3 (Tex. App. June 27, 2024). The only alleged substantive issue not addressed in HRS chapter 660 is the issue before the Court: whether “persons” under Chapter 660 extends to nonhumans. As Amici concede, the legislature most likely did not intend that nonhumans enjoy the privilege of the writ

of habeas corpus. Dkt.58 at 7. Moreover, even assuming that nonhumans had a liberty interest, it was in the power of the legislature to suspend it. Haw. Const. Art. I, § 15 (“The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe”).

B. The Common Law Writ of Habeas Corpus Does Not Apply to Nonhumans.

The Amici, having conceded that nonhumans do not have rights under HRS chapter 660, argue that this Court should set precedent by expanding the common law writ of habeas corpus to nonhumans. They argue that elephants have the same right to liberty that warrant habeas relief as humans because they possess the traits that define human beings, and because animals have statutory rights. *See* Dkt. 58 at 9.

As the Amici acknowledge, “[j]udicial law–making does not mean that judges may roam at will on a frolic of their own[.]” *Id.* at 10 (quoting *Lum v. Fullaway*, 42 Haw. 500, 502 (Terr. 1958)). But that is what the Amici are asking the Court to do. They claim that the “*ratio decidendi*” of habeas corpus is that “no one who has an interest in liberty should be deprived of that interest without justification.” That, however, puts the cart before the horse because there is no legal basis for the Amici’s foundational claim that nonhumans have a liberty interest, whether it arises from their similarities to humans, or because they “are limited legal persons already.” Dkt. 58 at 7. According to the Amici, “when confronted with a novel question,” the judge “must first extract from the precedents the underlying principle, the *ratio decidendi*; he must then determine the path or direction along which the principle is to move and develop, if it is not to wither and die.” *Lum*, at 504. *See* Dkt. 58 at 10. The Amici’s argument fails because there is no judicial precedent establishing the underlying principle that nonhumans have a liberty interest.

First, their claim that nonhumans have a liberty interest (much less one that must be protected through the writ of habeas corpus) is untethered to any existing law. Nothing in the common law indicates that nonhumans have the same liberty interests as humans. *See, e.g., Campbell v. Animal Quarantine Station, Div. of Animal Indus., Dep't of Agric., State of Hawaii, Bd. of Agric.*, 63 Haw. 557, 565, 632 P.2d 1066, 1071 (1981) (“The law clearly views a dog as personal property”). The Hawai‘i constitution itself does not recognize liberty interests held by nonhumans. *See* Hawai‘i Const., Art. I, § 5 (“No **person** shall be deprived of life, liberty or property without due process of law”) (emphasis added). And Hawai‘i statutes treat nonhumans as property that can be sold or even forfeited. *See, e.g.,* 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 then running); 711-1145(6) (forfeiture of dangerous dogs).

Second, the Amici argue that, “even if personhood is a prerequisite for habeas relief . . . the elephants *are* limited persons already” because “legal persons are simply the bearers of legal rights,” and animals “are legal rights-holders.” Dkt. 58 at 12. Examples of these rights, the Amici contend, include “the right to be free from the infliction of unjustifiable pain and suffering and a positive right to the provision of adequate food, water, and shelter.” *Id.* at 13 (citing HRS §§ 711-1109 and -1100. These laws are non sequiturs because they support the argument that animals should be treated humanely, not that they have a protectable liberty interest.⁵

⁵ The Amici’s reliance on Kānāwai Māmalahoe underscores that the writ of habeas corpus is fundamentally and procedurally different from the relief sought by NhRP. The Amici argue that the principle of Kānāwai Māmalahoe “imagines free movement without fear.” Dkt. 58 at 11 (citing *State v. Wilson*, 154 Hawai‘i 8, 24–25, 543 P.3d 440, 455–56 (2024)). But—even assuming that Kānāwai Māmalahoe applies in the habeas context—NhRP’s Petition would not grant “free movement” for Mari and Vaigai. Instead, the Petition “sought their transfer to another form of confinement.” *See* ICA Opinion at 2 n.2 (citing *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 562 P.3d 63, 70 (Colo. 2025) (“The fact that NRP

Obviously, the law does not grant all animals protected liberty interests. *See, e.g.*, HRS 183D-21 (requiring license to hunt game).

The Amici want the Court to engage in judicial activism. Their academic arguments and nonbinding authority fail to address why the broad issue animal personhood should be addressed by a judicial expansion of the law governing writs of habeas corpus, particularly when doing so may open a Pandora's box. A ruling that nonhumans have liberty interests would impact everything from agriculture to domestic pets, not only zoos and not only elephants. Which nonhumans have liberty interests and in what contexts, and what happens if they do? These questions should be determined by the legislature, which is "better positioned to balance the policy considerations and potential consequences that would flow from such a decision." *TMJ Hawaii, Inc. v. Nippon Tr. Bank*, 113 Hawai'i 373, 384, 384 n.6, 153 P.3d 444, 455, 455 n.6 (2007) (noting that the Court has exhibited restraint in the past when faced with policy decisions of significant magnitudes, and citing cases). Rather than forcibly mold habeas relief to further animal personhood recognition, the Court should direct Amici and NhRP's efforts to the legislature.

III. CONCLUSION

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

merely seeks the transfer of the elephants from one form of confinement to another is yet another reason that habeas relief is not appropriate here.")).

DATED: Honolulu, Hawai‘i, September 2, 2026.

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TO LAW PROFESSORS’ *AMICUS CURIAE* BRIEF

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HONORABLE KIMBERLY T. GUIDRY
Associate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served
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