APPELLATE COURT

OF THE

STATE OF CONNECTICUT

A.C. 42795

NONHUMAN RIGHTS PROJECT, INC.,
ON BEHALF OF BEULAH, MINNIE AND KAREN

v.

R.W. COMMERFORD & SONS, INC. A/K/A COMMERFORD ZOO, AND
WILLIAM R. COMMERFORD, AS PRESIDENT OF R.W. COMMERFORD & SONS, INC.

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT

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SUPPLEMENTAL ARGUMENT

Pursuant to this Court's October 17, 2019 Order, Plaintiff, the Nonhuman Rights Project, Inc., submits this supplemental brief to demonstrate that this Court should disregard 192 Conn. App. 36 ("Decision") as it is "clearly wrong," *Conway v. Town of Wilton*, 238 Conn. 653, 660 (1996), for the following reasons.[1]

First, this Court erroneously conflated the question of Plaintiff's standing with the merits when it determined that Minnie was not a "person" for standing purposes. Decision at 41. "The question of standing is not an inquiry into the merits." *State v. Pierson*, 208 Conn. 683, 687 (1988), *cert. denied*, 489 U.S. 1016 (1989); *State v. Iban C*, 275 Conn. 624, 664 (2005).

Second, in conflict with *Jackson v. Bulloch*, 12 Conn. 38 (1837),[2] this Court erroneously concluded that Plaintiff's standing depended on Minnie having "standing in the first instance." Decision at 41. In *Jackson*, James Mars, a stranger to the slave Nancy Jackson, had next friend standing to bring a habeas corpus case on her behalf even though, as a slave, Jackson herself lacked standing. Slaves were neither parties to the "social compact" described in the 1st section of the Connecticut Bill of Rights nor one of the "people" secured from unreasonable searches and seizures by the 8th section of the Connecticut Bill of Rights. 12 Conn. at 42-43. The Decision ignored the fact that habeas corpus has historically been used to establish the right to bodily liberty of individuals

[1] Minnie is the sole surviving elephant in this case; the other two, Beulah and Karen, have died during the pendency of this matter.

[2] The Connecticut Supreme Court has cited *Jackson* four times since 1990 alone. *See State v. Webb*, 238 Conn. 389, 410 n. 20 (1996); *State v. White*, 229 Conn. 125, 151 (1994); *State v. Joyner*, 225 Conn. 450, 466 (1993); *State v. Lamme*, 216 Conn. 172, 181 (1990).

previously unrecognized as "persons." *See Jackson*; *Somerset v. Stewart*, 1 Loftt 1 (K.B. 1772); *Commonwealth v. Aves*, 35 Mass. 193 (1836); *Lemmon v. People,* 20 N.Y. 562 (1860); *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695, 696-97 (D. Neb. 1879).

Third, the English and American common law of habeas corpus have long granted third parties standing to challenge a stranger's private detention. The decision in *Jackson,* 12 Conn. at 41, favorably cited *Somerset* and *Aves*, both habeas corpus cases in which the common law writ was successfully sought by strangers on behalf of slaves. *E.g., Lemmon*; *Case of the Hottentot Venus*, 13 East 195 (K.B. 1810); 11 *Halsbury's Laws of England* 783 (4th ed. 1976); *Truth About Motorways Pty Ltd. v. Macquarie Infrastructure Investment Management Ltd*, 200 CLR 591, 600, 625-27 (Australia 2000); *King v. Waters*, VLR 372, 375 (Victoria Supreme Ct. 1912); *Ex Parte West*, 2 Legge 1475, 1476-77 (NSW 1861). Connecticut's first habeas corpus statute was intended to perfect the common law writ, Title 47, §§ 1 and 2 (May 1821); Z. Swift, *Digest of the Laws of Connecticut* 569 (1821), and is in all relevant respects identical to General Statutes § 52-466. Moreover, Connecticut's habeas corpus standing law for private detentions has never been in accord with federal habeas corpus jurisprudence, 28 U.S.C. § 2241, as the latter has never applied to private detentions, *Neale v. Pfeiffer*, 523 F. Supp. 164, 164-65 (S.D. Ohio 1981) and, unlike Connecticut, is governed by Article III of the United States Constitution.

Fourth, in conflict with *Jackson, supra,* and Anglo-American jurisprudence, this Court erroneously concluded that Minnie is not a "person" because she is "incapable of bearing duties and social responsibilities required by [the] social compact." Decision at 46. But, as made clear above, Connecticut's "social compact" has never been relevant in a habeas

corpus case. *See* 12 Conn. at 42-43. In the *Brief of Amici Curiae Philosophers* (dated Nov. 13, 2018) filed with this Court in A.C. 41464,[3] numerous philosophers explain that personhood does not depend on the existence of a social contract, but rather social contracts create *citizens* out of existing "persons." *See Amici Brief* at 4-5. Moreover, the right to bodily liberty protected by habeas corpus *cannot* depend on the ability to bear duties and responsibilities, since countless individuals in Connecticut (*e.g.*, the comatose, incompetents, and infants) possess the former without the latter. *See Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1056-57 (2018) (Fahey, J., concurring) (criticizing *Matter of Nonhuman Rights Project Inc v. Lavery*, 152 A.D.3d 73, 78 (1st Dept. 2017) and *People ex rel Nonhuman Rights Project Inc v. Lavery*, 124 A.D.3d 148, 152 (3d Dept. 2014)); *Amici Brief* at 5.

Fifth, Minnie is *already* a "person" as she has the right of a trust beneficiary under General Statutes § 45a-489a(a). *See* Connecticut Senate Transcript, 5/28/2009 (Sens. McDonald and Frantz); *id*. at 12 (Sen. McDonald) ("[T]he general principles of trust law would apply. This was merely creating a separate framework to deal with the situation of animals as beneficiaries of a trust, but the legal responsibilities of the trustee would be very familiar to our courts"); *see also New York E. Annual Conference of Methodist Church v. Seymour*, 151 Conn. 517, 520 (1964); *Restatement (Third) of Trusts,* secs. 43, 47 (2003). Personhood is merely the *capacity* for rights, while an entity with a right is necessarily a "person." *See* Black's Law Dictionary (11th ed. 2019) ("[A] person is any being whom the law regards as capable of rights *or* duties. Any being that is so capable is a person, whether a human being or not. . . .") (citation omitted) (emphasis added). This case seeks

[3] Plaintiff requests the Court take judicial notice of this amicus brief.

recognition of Minnie's right to bodily liberty protected by habeas corpus based on the uncontroverted evidence establishing that elephants possess the autonomy and self-determination that lie at the heart of, and are sufficient for, common law habeas corpus—either as her only right or, alternatively, her second right in addition to her right as a trust beneficiary.

Sixth, by asserting that the undefined term "person" in General Statutes § 52-466(a)(1) cannot apply to an animal, Decision at 47, this Court erroneously conflated "person" with "human being," which are not synonymous. *See State v. Courchesne*, 296 Conn. 622, 703-06 (2010); *see also Roe v. Wade,* 410 U.S. 113 (1973); *Byrn v. New York City Health & Hospitals Corp.,* 31 N.Y. 2d 194, 200-01 (1972); *People v. Graves*, 78 N.Y.S.3d 613, 617 (4th Dept. 2018).

Seventh, General Statutes § 52-466 and Practice Book § 23-21 *et seq*. are purely procedural and cannot determine the substantive scope of habeas corpus. *See* Conn. Const. Art. I, § 12; *Negron v. Warden Hartford Community Correctional Center*, 180 Conn. 153, 157 (1980); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 44, *cert. denied*, 558 U.S. 991 (2009). Thus, it is irrelevant that judges or legislators may not have had elephants in mind when determining who was entitled to habeas corpus relief. Decision at 44, 47. *See In re Hall*, 50 Conn. 131, 132 (1882); *Somerset, supra*.

Eighth, Connecticut courts are "charged with the ongoing responsibility to revisit our common-law doctrines when the need arises." *State v. Brocuglio*, 264 Conn. 778, 793 (2003); *e.g., State v. Guess*, 244 Conn. 761, 775-76, 778 (1998); *Dacey v. Connecticut Bar Association*, 184 Conn. 21, 25-26 (1981).

Ninth, allowing Minnie to seek habeas corpus relief would *not* "require [this Court] to upend this state's legal system to allow highly intelligent, if not all, nonhuman animals the right to bring suit in a court of law." Decision at 44. Although the right of a trust beneficiary has been available to every nonhuman animal in Connecticut under General Statutes § 45a-489a(a) for a decade – even though they lack every other right and remain personal property – there are no reported cases of any nonhuman animal trying to enforce their rights under this statute. Personhood, being merely the *capacity* for rights, does not mandate any particular right. Thus, Minnie may possess the right to bodily liberty protected by habeas corpus while remaining personal property. Habeas corpus relief has been granted to nonhuman animals in Argentina and Colombia; other rights have been granted to nonhuman animals in Brazil and India; and rights have been granted to a national park and a river in New Zealand, as well as to the Amazon rainforest in Colombia, all without those countries' legal systems being upended.

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CERTIFICATION

I hereby certify that: copies of the foregoing brief and appendix have been delivered electronically to the last known e-mail address of each counsel of record and the non-appearing defendants for whom an e-mail address has been provided on this 15th day of November, 2019; I have included counsel's and defendants' names, mailing addresses, e-mail addresses, and telephone numbers below; copies of the foregoing brief and appendix have been sent by first-class U.S. mail, postage prepaid to the trial judge listed below on this 15th day of November, 2019; the foregoing brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and the foregoing brief and appendix comply with all applicable rules of appellate procedure, including Practice Book Section 67-2.

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A copy of the electronic confirmation receipt is attached hereto.

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