

SUPREME COURT OF COLORADO

Ralph Carr Judicial Center
2 East 14th Avenue
Denver, CO 80203

Appeal from the 4th Judicial District, El Paso
County, 2023CV31326
Order by Judge Eric Bentley

Petitioner: The Nonhuman Rights Project, Inc.

v.

**Respondents: Cheyenne Mountain Zoological
Society and Bob Chastain**

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Case Number: 2024SA21

**BRIEF OF AMICI CURIAE
THE ASSOCIATION OF ZOOS & AQUARIUMS
AND ACCREDITED COLORADO ZOOS
IN SUPPORT OF RESPONDENTS**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28(a)(2) and (3), C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. The brief of *amici curiae* complies with the applicable word limit set forth in C.A.R. 29(d). Specifically, the brief contains 4,723 words (excluding the caption page, this certificate page, the table of contents, the table of authorities, and the signature block).

I acknowledge that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28(a)(2) and (3), C.A.R. 29, and C.A.R. 32.

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IDENTITY AND STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici comprise the principal non-profit accrediting organization dedicated to advancing zoos and aquariums nationwide, along with two accredited Colorado zoos. *Amici* have a strong interest in the continued well-being of the elephants and thousands of animals under their care in Colorado. The welfare of these animals would be jeopardized should this Court rule in petitioner's favor.

The Association of Zoos & Aquariums (AZA) is a Section 501(c)(3) non-profit organization, founded in 1924, dedicated to advancing zoos and aquariums in the areas of conservation, education, science, and recreation. AZA is the independent accrediting organization for the best zoos and aquariums in America, Canada, and Mexico. Indeed, the Colorado legislature recently recognized the high standards to which the AZA holds member institutions, specifically exempting AZA-accredited institutions from a ban on traveling-animal acts. *See* C.R.S. § 33-1-126(4)(a)(II). AZA has 251 accredited members, including Cheyenne Mountain Zoo, a longtime accredited member in good standing. At least sixty AZA-accredited members have elephants in their care. As of May 2024, AZA-accredited members care for 322 elephants.

Denver Zoo is home to one of the largest herds of Asian elephants in North America—one of the few North American zoos that can care for multiple adult male

Asian elephants. It is a national and worldwide leader on the study of and care for Asian elephants. Denver Zoo currently cares for five elephants of various ages—Groucho (53), Bodhi (20), Billy (16), Chuck (16), and Jake (15)—at its ten-acre, multi-million-dollar habitat. Denver Zoo cares for approximately 3,000 animals comprising about 450 species. One of the most popular zoos nationwide, the zoo had 1.5 million guest visits in 2023.

Pueblo Zoo is an AZA-accredited, 25-acre zoo in Pueblo, Colorado. Founded in 1934, the zoo is home to more than 420 animals and more than 140 species, including endangered species such as red pandas, American bison, and African painted dogs. Pueblo Zoo attracts more than 90,000 visitors a year.

SUMMARY OF THE ARGUMENT

“The essential purpose to be served with a writ of habeas corpus is to resolve the issue of whether a *person* is unlawfully detained.” *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976) (emphasis added). The question presented is whether an elephant is a “person” for purposes of habeas corpus relief. The answer is no. While “a person’s a person, no matter how small,” Dr. Seuss, *Horton Hears a Who* (1954), Colorado’s habeas statute and the common law squarely reject the notion that a person’s a person *no matter the species*.

The Colorado Habeas Corpus Act allows only a “person” who “is confined or restrained of his liberty under any color or pretense whatever” to seek a writ of habeas corpus. C.R.S. § 13-45-102. Boxed out by the statute’s plain text, petitioner Nonhuman Rights Project (NhRP) urges this Court to look to the common law to expand the scope of personhood, arguing that the common-law writ of habeas corpus provides broader relief than Colorado’s habeas statute.

But no common-law authority supports extending habeas relief to nonhumans. Indeed, at common law, animals were property. The law not only *allowed* people to detain wild animals at will, but also *encouraged* it by rewarding the captor with ownership. The writ of habeas corpus, by contrast, is designed to *prevent* arbitrary detention. This distinction between humans and nonhuman animals for purposes of arbitrary detention makes sense because humans, unlike animals, have the capacity to participate in the social contract—i.e., the capacity to give up some freedom in exchange for rights and duties that protect us and allow us to participate in government.

Even if this Court could apply its common-law authority to extend habeas rights to animals, it shouldn’t. First, expanding habeas relief to nonhumans would have sweeping ramifications: Apart from the potential effect on zoos and aquariums in Colorado, the writ could also be asserted against any pet owner, rancher,

beekeeper, or dairy farmer. Second, the Legislature is best suited to weigh the sensitive and consequential policy considerations at stake regarding whether animals should be afforded legal personhood.

Every court that has considered materially identical habeas petitions has rejected them. The California Supreme Court did so in 2023. *See* Order Denying Habeas Petition, *Nonhuman Rights Project, Inc.*, No. S281614 (Cal. Dec. 13, 2023) (summary denial). New York’s highest court did so a year earlier. *Nonhuman Rights Project, Inc. v. Breheny*, 197 N.E.3d 921 (N.Y. 2022). And Massachusetts and Connecticut did so even before that. *Rowley v. City of New Bedford*, 159 N.E.3d 1085 (Mass. App. Ct. 2020); *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839 (Conn. App. Ct. 2019). While these courts have acknowledged elephants’ extraordinary nature, none has found a legal basis sufficient to justify extending the writ of habeas corpus beyond humankind.

This Court should affirm the decision below.

ARGUMENT

I. The Colorado Habeas Act’s Reference to “Person” Does Not Extend to Nonhuman Animals

Under Colorado’s habeas statute, “[w]hen any person not being committed or detained for any criminal ... matter is confined or restrained of his liberty under any color or pretense whatever,” that person may seek a writ of habeas corpus. C.R.S.

§ 13-45-102. Nothing in the statute’s text or history suggests that for purposes of the statute, the term “person” encompasses nonhuman animals.

The statute’s relevant clause, quoted above, is materially unchanged from the original enactment in 1861, which likewise limited relief to any “person.” And though the statute does not define “person” expressly, it did not need to: Contemporary legal dictionaries confirm the universal understanding of “person” to mean “[a] *human being*, considered as the subject of rights, as distinguished from a *thing*, ... whether *animate or inanimate*.” Alexander M. Burrill, *A New Law Dictionary and Glossary* 794 (1851) (first and last emphasis added); *see also* J.J.S. Wharton, *Law Lexicon, or Dictionary of Jurisprudence* 576 (1860) (“PERSON, a man or woman; ... Persons are divided into (1.) *natural*, such as God formed them; and (2.) *artificial*, such as are devised by human laws ..., who are called corporations or bodies-politic.”). Contemporary usage dictionaries likewise explained that “person” meant “[a]n *individual human being* consisting of body and soul”; a “man, woman or child, considered as opposed to things.” John Boag, *A Popular and Complete English Dictionary* 965 (1848) (emphasis added). The Colorado legislature that enacted the habeas statute thus would have understood “person” as synonymous with human being (plus, at most, entities created by humans).

Like its predecessor, the current Habeas Act does not separately define “person.” Instead, “person” is defined in C.R.S. § 2-4-401, whose general definitions “apply to every statute, unless the context otherwise requires.” *Id.* Under that provision, “[p]erson’ means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.” *Id.* § 2-4-401(8). Nothing in that list plausibly extends to nonhuman animals, and reading the statute to apply to animals “would require [this Court] to add words that the General Assembly did not use, which [the Court] may not do.” *Godinez v. Williams*, 544 P.3d 1233, 1238-39 (Colo. 2024).

If Colorado’s legislature wants to expand the definition of “person” to include nonhuman animals, it knows how to do so. The legislature has amended C.R.S. § 2-4-401 twelve times since 1980, including most recently in 2021. *See* 2021 Colo. Legis. Serv. 889. Indeed, in 1990 the legislature expanded the definition of “person” to include “limited liability compan[ies].” 1990 Colo. Legis. Serv. 444. NhRP points to no text or legislative history evincing legislative intent to include nonhuman animals within the statutory definition of “person.”

NhRP argues that the statute’s definition of “[p]erson’ plausibly encompasses elephants” because “[o]ne definition of ‘individual’ is ‘organism,’ a term that

indisputably encompasses nonhuman animals.” NhRP Br. 17. But that argument only underscores just how extreme NhRP’s position is and highlights the far-reaching consequences of a holding in NhRP’s favor. *See infra* Part III.A. Indeed, not only does the term “organism” encompass nonhuman animals, it also extends to “plant[s]” and “*single-celled life form[s]*.” *Organism*, Oxford English Dictionary (2024) (emphasis added), <https://bit.ly/4c3Us0k>. The consequences of expanding Colorado’s legal protections to every single-celled organism as “persons” are too vast to catalogue here.¹

II. Habeas Corpus Applies Only to Humans Under the Common Law, Because Only Humans Can Participate in the Social Contract

Over the centuries of its existence, the historic writ of habeas corpus has never applied to animals. As New York’s highest court recently explained, “despite the awesome power of the writ of habeas corpus and its enduring use throughout the centuries, no court of this state—or any other—has ever held the writ applicable to a nonhuman animal.” *Breheny*, 197 N.E.3d at 927. At common law, wild animals could be trapped and detained at will. But the Western legal tradition understood that allowing the government to arbitrarily detain *humans* leads to tyranny. The

¹ NhRP’s “organism” argument also undercuts its claim that this dispute is limited to the captivity of five elephants. *See infra* at 17-18.

notion that the law should treat detention of animals differently than detention of humans is logical, because animals lack the ability to participate in the social contract—i.e., to voluntarily relinquish the freedom that exists in a state of nature in exchange for political rights. The very logic of the historic habeas writ therefore counsels *against* extending habeas to animals.

A. The Common Law Distinguishes Between Animals (Which Can Be Detained Arbitrarily) and Humans (Who Cannot)

1. Animals Were a Form of Property at Common Law, and People Could Therefore Detain Wild Animals at Will

The notion that animals are property dates back at least to the Code of Hammurabi. See Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part I*, 19 *Animal L.* 23, 32 (2012) (citation omitted). The Code contains rules “for the protection of the owner’s economic value in the animal.” *Id.* at 32-33.

The Western legal tradition is filled with discussions about the detention of wild animals, which had no right to bodily liberty:

- Justinian (circa 533 C.E.), for example, declared that “all animals, ... so soon as they are taken by any one, immediately become ... the property of the captor; for natural reason gives to the first occupant that which had no previous owner.” *The Institutes of Justinian* 95 (Thomas Collett Sandars trans., 1922).
- Henry de Bracton (circa 1235 CE) opined that an individual can “tak[e] possession of things that are owned by no one ... [such] as

wild beasts, birds and fish.” Henri De Bracton, *Bracton on the Laws and Customs of England* 42 (Samuel E. Thorne trans., 1968).

- Blackstone similarly explained that “[w]ith regard ... to animals *ferae naturae*, all mankind had by the original grant of the Creator a right to pursue and take any” wild animal, “and this natural right still continues in every individual,” unless “restrained by the civil laws of the country.” 1 William Blackstone, *Commentaries* *403.

This issue famously arose in American law in *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805), in which the New York Supreme Court held that a hunter has no property right in an “animal *ferae naturae*” like a fox until he “wound[s], circumvent[s] or ensnare[s]” the fox, “so as to deprive” the fox “of [its] natural liberty.” *Id.* at 177-79. Needless to say, no one in *Pierson* contested the underlying principle that humans could lawfully detain the fox.

2. Habeas Has Always Protected Humans and Has Never Applied to Animals

Habeas corpus began in the Assize of Clarendon, an 1166 C.E. legislative enactment of King Henry II. Michael O’Neill, *On Reforming the Federal Writ of Habeas Corpus*, 26 Seton Hall L. Rev. 1493, 1495-96 (1996). By 1628, the writ of habeas corpus became “the highest remedy in law, for any *man* that is imprisoned.” *Smith v. Bennett*, 365 U.S. 708, 712 (1961) (quotation omitted) (emphasis added).

In contrast to his views about the arbitrary detention of animals, Blackstone considered arbitrary detention of *humans* to be a grave injustice: “[C]onfinement of

the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, *and therefore a more dangerous engine of arbitrary government.*” 1 William Blackstone, *Commentaries* *136 (emphasis added). For this reason, the habeas writ is essential because it preserves “personal liberty; for if ... it were left in the power of ... the highest magistrate to imprison arbitrarily whomever he or his officers thought proper, ... there would soon be an end of all other rights and immunities.” *Id.* at *135.

All states recognized the common-law writ of habeas corpus at independence. O’Neill, *supra*, at 1502. And in defending the Constitution’s Suspension Clause, Alexander Hamilton insisted that the writ of habeas corpus protects against “the practice of arbitrary imprisonments.” *The Federalist* No. 84. Hamilton, of course, was not discussing “imprisonments” of animals—which could be detained at will at common law. Indeed, NhRP cites no authority indicating anyone in early America thought habeas extended to animals.

Today, both this Court and the U.S. Supreme Court have recognized the critical role that the writ of habeas corpus plays in securing our liberty. *E.g.*, *Geer v. Alaniz*, 331 P.2d 260, 261 (Colo. 1958) (describing the writ of habeas corpus as “the greatest of all writs” and “the precious safeguard of personal liberty”); *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (“The Framers viewed freedom

from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.”). Yet neither court has ever remotely suggested that habeas could apply to nonhumans. On the contrary, this Court has explained that, however intelligent, loyal, or “soulful eyed” an animal may be, “the constitutional liberties guaranteed citizens are not *a fortiori*” extended to animals:

Though almost human in many ways because of their intelligence and loyalty, ... such attributes do not raise canines to the level occupied by *homo sapiens*. Thus the constitutional liberties guaranteed citizens are not *a fortiori*, a privilege extended to the dog world. *Even the most soulful eyed canine has rights, privileges and protection only within his master’s shadow as provided by law.*

Thiele v. City & Cnty. of Denver, 312 P.2d 786, 789 (Colo. 1957) (emphasis added); *see also Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 700-01 (1897) (noting that animals can be “kept for pleasure, curiosity, or caprice”).

In short, the common law—as traced through the Western legal tradition and embraced by the Founders, this Court, and the U.S. Supreme Court—treated arbitrary imprisonment of animals quite differently from arbitrary imprisonment of humans.

B. Animals Cannot Take Part in the Social Contract That Serves as the Foundation of Our Government

The notion that humanity devolves into a brutal “state of nature” in the absence of government dates back to at least Biblical times. *See, e.g., Judges 17:6*

(“In those days Israel had no king; everyone did as they saw fit.”). Thus, the “social contract theory” states that “we enter into a societal agreement that requires that we surrender some of our freedoms enjoyed in the state of nature. In return, we receive political rights and government services that supposedly make us safer and better able to function interdependently.” David E. Murley, *Private Enforcement of the Social Contract: DeShaney and the Second Amendment Right to Own Firearms*, 36 *Duq. L. Rev.* 827, 853-54 (1998).

Thomas Hobbes famously discussed this social contract in *Leviathan*. See 2 Thomas Hobbes, *Leviathan* 120 (A.R. Waller, ed., 1904) (1651). According to Hobbes, government—supported by the social contract—prevents humans from treating one another like animals in a state of nature, where “every man is Enemy to every man” and life is “nasty, brutish, and short.” *Id.* at 84. Importantly, then, Hobbes did not believe that animals could take part in this social contract. See *id.* at 93 (“To make Covenants with [brute] Beasts, is impossible; because not understanding our speech, they understand not, nor accept of any translation of Right; nor can translate any Right to another.”). Nor did John Locke, who further developed this notion of the social contract. See John Locke, *Two Treatises of Government* 99 (London 1821) (1681). Like Hobbes, Locke considered animals not to be humanity’s equals in this contract but rather humanity’s “property,” “founded

upon the [Divine] right [man] ha[s] to make use of those things that were necessary or useful to his being.” *Id.* at 99.

The U.S. Supreme Court has imported the social-contract theory into its jurisprudence. In *McCulloch v. Maryland*, 17 U.S. 316 (1819), for example, Chief Justice Marshall insisted that “[t]he government of the Union ... is emphatically and truly, a government of the people. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.” *Id.* at 404-05. In that vein, when asked in the *Slaughter-House Cases*, 83 U.S. 36 (1872), whether the Thirteenth Amendment’s prohibition on “involuntary servitude” applied to servitudes on property, the Supreme Court declared that the Thirteenth Amendment “only appl[ies] to human beings,” because the Thirteenth Amendment is a “declaration of the personal freedom of *all the human race* within the jurisdiction of this government.” *Id.* at 69 (emphasis added). The Supreme Court’s modern jurisprudence likewise routinely notes that the Bill of Rights is designed to protect “*human dignity*.” *See, e.g., Brown v. Plata*, 563 U.S. 493, 510 (2011) (“Prisoners retain the essence of *human dignity* inherent in all *persons*.” (emphasis added)).

It is logical for the Supreme Court to conclude that constitutional provisions do not apply to animals. As the Connecticut Appellate Court recognized, the social-

contract theory is “based on the ideal of moral agents coming together to create a system of rules,” and “it is inescapable that an elephant, or any nonhuman animal for that matter, is incapable of bearing duties and social responsibilities.” *R.W. Commerford & Sons, Inc.*, 216 A.3d at 845 (quotation omitted). In other words, legal duties and legal rights go together under the social-contract theory—and because animals “lack moral agency” and “cannot submit to societal responsibilities,” they do not automatically receive legal rights. Richard L. Cupp Jr., *Moving Beyond Animal Rights: A Legal/Contractualist Critique*, 46 San Diego L. Rev. 27, 66 (2009). As noted, social-contract theory was designed to *prevent* humans from treating each other like animals and devolving into a feral-like state of nature. *See* Hobbes, *supra*, at 84. Because only humans can participate in the social contract underlying our system of government, only humans therefore have constitutional rights under that system. The same goes for habeas relief.

III. The Court Should Not Extend Habeas Relief to Animals

As this Court stated in *Elgin v. Bartlett*, “[t]he common law takes incremental steps through the exercise of judgment based upon practice and experience,” establishing “a common law policy of deference” when “presented with no compelling reason to disrupt this precedent.” 994 P.2d 411, 420 (Colo. 1999), *rev’d on other grounds*, *Rudnicki v. Bianco*, 501 P.3d 776 (Colo. 2021). Accordingly,

while this Court possesses common-law authority to create new causes of action, it exercises caution in doing so. *See Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 926 (Colo. 1997). As outlined below, it would be difficult to overstate the legal and practical consequences of extending habeas to nonhumans.

A. Extending Habeas Relief to Animals Would Disrupt Countless Industries and Lives

The harmful effects of extending habeas relief to animals in Colorado would not just affect animals in state custody, as Colorado does not have a “state action” habeas pleading requirement. Under the statute’s plain language, a petitioner may contest their confinement whether held by the state *or* a citizen. *See Nelson v. Dist. Ct.*, 527 P.2d 811, 814 (Colo. 1974) (using habeas proceeding for a child-custody dispute). NhRP does not disagree, having petitioned for habeas relief on behalf of elephants in a *private* zoo.

Because a Colorado habeas petitioner need not allege that the detainee is held in government custody, the sky is the limit for habeas claims should this Court expand it to nonhumans. As the *Breheny* court explained, “[a] determination that ... an elephant[] may invoke habeas corpus to challenge her confinement ... would have an enormous destabilizing impact on modern society.” 197 N.E.3d at 929. To take just a few examples:

- All three AZA-accredited Colorado zoos could face the uncertain future of species-by-species litigation and potential involuntary transfer of their thousands of animals. This could not only deprive hundreds of thousands of Coloradans of the opportunity to see and learn about these animals, but could also harm the animals themselves. The animals could be transferred from the superlative care of AZA-accredited institutions to institutions of unknown quality of care.
- Nearly 40,000 farms and ranches dot Colorado, employing almost 200,000 people and generating \$47 billion for the state’s economy.² The cattle business in Colorado alone brings in \$4 billion annually.³ All of these institutions could be dragged into court and potentially shuttered, crippling the agricultural industry and food supply should the Court rule for NhRP here.
- Almost 65% of Colorado households own a pet, with approximately 158,000 dogs in Denver alone.⁴ Each of these pets could become the subject of a habeas suit.

Even if Colorado had a “state action” requirement, the consequences of extending habeas relief to animals would be enormous. The Denver Police Department relies on dogs and horses to aid with law enforcement.⁵ Colorado also

² Colo. Dep’t of Agric., *Colorado Agriculture*, <https://bit.ly/3z6tO8g> (last visited June 24, 2024).

³ *Id.*

⁴ *Pet Ownership by State*, Wisevoter, <https://bit.ly/4aYN1WM> (last visited June 24, 2024); David Sachs, *Denver Has More Dogs than Children, and Everything Else We Learned About Denver’s Dog Parks*, *Denverite* (Dec. 16, 2019), <https://bit.ly/3yUU0md>.

⁵ *Denver Police Department K-9 Unit*, Denver Police Museum,

has several state-funded research laboratories that work with animals.⁶ And innumerable classroom pets reside in public schools across Colorado—including “Noodle” the leopard gecko, who was able to stay with his elementary students after they successfully petitioned their school district.⁷

Thus, contrary to NhRP’s assertion, this Court’s decision would not and could not be confined to “the five elephants at Cheyenne Mountain Zoo.” NhRP’s Br. 26. NhRP’s core argument is that the elephants merit habeas relief because they are “autonomous and extraordinarily cognitively complex beings.” *Id.* But the same could surely be said of monkeys, dolphins, and numerous other species (especially the undersigned authors’ pets). Other than the line separating all humans from all other creatures, courts have no plausible standard to determine which species may petition for habeas relief. Indeed, the president of People for the Ethical Treatment of Animals has extolled animals’ “logical, mathematical, linguistic, and emotional intelligence,” including octopuses’ and crows’ ability to use tools, “[t]he

<https://bit.ly/3RnQ580> (last visited June 24, 2024); Amy Hunger, *Meet Denver’s Mounted Patrol Unit*, 9News (Sept. 28, 2023), <https://bit.ly/3xfcjLK>.

⁶ *Animal Care & Use Program*, Research & Innovation Office, University of Colorado Boulder, <https://bit.ly/4ckZy8d> (last visited June 24, 2024).

⁷ *Colorado Stem Academy students learn public policies through classroom pet lizard “Noodle”*, C.B.S. News Colorado (Mar. 29, 2023), <https://cbsn.ws/4ccluC8>.

mathematical abilities of fish, [which] have prove[n] to be on a par with those of monkeys, dolphins, and bright young human children,” and birds’ capacity to “learn meaningful English” and count. Ingrid Newkirk, *Top Scientific Minds Declare That We Are Just One Among Many Animals*, The Huffington Post (Aug. 28, 2012), <https://bit.ly/4c1sSkf>.

In short, a ruling extending habeas to nonhumans “would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts.” *Breheny*, 197 N.E.3d at 929.

B. The Legislature Is the Appropriate Body to Consider the Policy Changes Petitioners Seek

Under Colorado’s Constitution, “[t]he legislative power of this state” is “vested in the general assembly consisting of a senate and house of representatives.” Colo. Const. art. V, § 1. This provision grants “the broadest legislative powers to the General Assembly”—not the Judiciary—“to control its policy.” *Schwartz v. People*, 104 P. 92, 96, 111 (Colo. 1909). Accordingly, “it is not the role of this court to act as overseer of all legislative action.” *People v. Goodale*, 78 P.3d 1103, 1105-06 (Colo. 2003) (citations omitted). When issues with “compelling public policy concerns on both sides” arise, “it’s the General Assembly’s role—not this court’s—to weigh those concerns.” *Scholle v. Ehrichs*, 546 P.3d 1170, 1185

(Colo. 2024). Contested policy issues “should be committed to those who write the laws rather than those who interpret them.” *Ziglar v. Abbasi*, 582 U.S. 120, 135-36 (2017) (cleaned up).

Here, extending habeas relief to animals would have vast consequences for Colorado’s economic and social fabric. The question whether the people of Colorado will suffer those consequences should be left to the Legislature—the people’s democratically elected representatives. While courts’ expertise lies in announcing what the law means, they are not directly accountable to the people and thus should avoid effecting momentous policy decisions on the public’s behalf. *See The Federalist* No. 47 (James Madison) (“Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR.” (citing Montesquieu)).

By contrast, allowing the legislature to extend habeas relief to animals would accord with the historical tradition regarding animal rights. For centuries animals had no legal protections and “could be exploited, used, abused, or dispatched at [their owner’s] pleasure.” Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. Rich. L. Rev. 201, 201 (1974). Legislatures played a critical role in changing that dynamic, ever since the Puritans enacted “the world’s first animal protection

laws” in 1641. Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. Env’t Affs. L. Rev. 471, 539 (1996).

Indeed, state and federal legislatures have continued to expand animal rights. Today, all fifty states have felony animal-cruelty laws.⁸ Colorado has been a leader in animal rights, enacting numerous statutes protecting animals. *See, e.g.*, C.R.S. § 18-9-202(1)(a) (general cruelty to animals statute); *id.* § 18-9-202(1)(b) (abandonment of a cat or dog); *id.* § 35-80-106.6 (protecting animals in pet-care facilities). Recently, the Colorado legislature provided additional protections for law-enforcement animals (amending C.R.S. § 18-9-201 in 2024). And Congress has passed multiple animal-welfare statutes, including the Animal Welfare Act, 7 U.S.C. § 2131, and the Endangered Species Act, 16 U.S.C. § 1531.

Not only *should* legislatures be the bodies considering how far to extend animal rights, they are doing it. Notably, Colorado’s recently enacted restrictions on traveling-animal acts specifically *exempt* AZA-accredited zoos, C.R.S. § 33-1-126(4)(a)(II), confirming that the legislature is ready and willing to make nuanced policy judgments about animal confinement and to enact laws accordingly. And legislatures have considered and rejected proposals to grant animals legal

⁸ *See* Animal Legal Defense Fund, *Laws That Protect Animals*, <https://bit.ly/3L08qod> (last visited June 24, 2024).

personhood. Utah’s legislature, for example, recently enacted, and the governor signed, a statute expressly *prohibiting* “a governmental entity” from granting “legal personhood” to “a nonhuman animal.” H.B. 249, 2024 Gen. Sess. (Utah 2024), <https://bit.ly/4b1dMdp>; Trevor Myers, *Gov. Cox Signs Bill to Include Ten Commandments in Utah Public School Curricula, Address “Legal Personhood,”* (Mar. 21, 2024), <https://bit.ly/4b7PMFy>. While state and local legislatures nationwide may come down differently on this issue given the serious legal and practical concerns involved, that is precisely why courts should leave this issue to legislatures, which are best suited to channel the will of their respective constituencies.

At least one municipality has enacted an ordinance “grant[ing] elephants the fundamental right to bodily liberty.” City of Ojai, Cal., Ordinance No. 940 (2023), <https://bit.ly/3KCFbYa>; *see also* Nonhuman Rights Project, *California City Passes Historic Animal Rights Legislation* (Sept. 27, 2023), <https://bit.ly/4ckZoO9>. But that was done legislatively, and in cooperation with NhRP, underscoring that NhRP itself recognizes that legislatures, not courts, are best suited to address these issues. *Id.* (highlighting NhRP’s intent to “work[] with other cities in California and across the country to pass similar legislation”).

If Colorado is to extend habeas relief (and by extension legal personhood) to animals, the body closest to the people—the Legislature—must be the one to enact such a sweeping revision of our system of law.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision below.

Dated: June 26, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the above and foregoing BRIEF OF AMICI CURIAE THE ASSOCIATION OF ZOOS & AQUARIUMS AND ACCREDITED COLORADO ZOOS IN SUPPORT OF RESPONDENTS by e-service, this 26th day of June 2024, addressed to the following:

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