

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X

TREVOR DEBLASE and NAN DEBLASE,

Index No. 522689/2023

Plaintiffs,

Motion Seq. Nos. 1 & 2

- against -

MITCHELL HILL,

Defendant.

-----X

---

**AMICUS CURIAE BRIEF OF NONHUMAN RIGHTS  
PROJECT INC IN SUPPORT OF PLAINTIFFS**

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF AMICUS CURIAE ..... 1

INTRODUCTION ..... 3

ARGUMENT ..... 5

    A. The role and duty of common law courts is to align the law with evolving societal norms and the demands of justice. .... 5

    B. Evolving societal norms and the demands of justice support including the family dog within one’s “immediate family” for purposes of the zone of danger rule. .... 7

        1. *Greene v. Esplanade Venture Partnership* does not preclude the family dog from being included within one’s “immediate family.” ..... 8

        2. Societal norms regarding the family dog have evolved. .... 10

        3. Excluding the family dog from one’s “immediate family” is contrary to the demands of justice. .... 16

CONCLUSION ..... 23

## TABLE OF AUTHORITIES

### Cases

<i>Anne Arundel County v. Reeves</i> , 474 Md 46 [Md 2021] .....	14, 20, 21
<i>Battalla v. State</i> , 10 NY2d 237 [1961] .....	17
<i>Bovsun v. Sanperi</i> , 61 NY2d 219 [1984] .....	9
<i>Braschi v. Stahl Assoc. Co.</i> , 74 NY2d 201 [1989] .....	9
<i>Bueckner v. Hamel</i> , 886 SW2d 368 [Tex. App. 1994] .....	16
<i>C.M. v. E.M.</i> , 82 Misc 3d 198 [Sup Ct Nassau County 2023] .....	13
<i>Carbasha v. Musulin</i> , 217 W Va 359 [2005] .....	21
<i>Carcaldi v. McKenzie</i> , DBDCV136013956S, 2014 WL 2257138 [Conn Super Ct Apr. 24, 2014] .....	15
<i>Cohen v. Varig Airlines (S.A. Empresa de Viacao Aerea Rio Grandense)</i> , 62 AD2d 324 [1st Dept 1978] .....	19
<i>Corso v. Crawford Dog and Cat Hosp., Inc.</i> , 97 Misc 2d 530 [Civ Ct Queens County 1979] .....	21
<i>Feger v. Warwick Animal Shelter</i> , 59 AD3d 68 [2d Dept 2008] .....	12, 13, 20
<i>Ferrara v. Galluchio</i> , 5 NY2d 16 [1958] .....	17

<i>Funk v. United States</i> , 290 US 371 [1933] .....	6
<i>Gallagher v. St. Raymond's R.C. Church</i> , 21 NY2d 554 [1968] .....	5
<i>Greene v. Esplanade Venture Partnership</i> , 36 NY3d 513 [2021] .....	4, 8, 9, 10, 12, 16
<i>Greene v. Esplanade Venture Partnership</i> , 172 AD3d 1013 [2d Dept 2019] .....	7
<i>Hennet v. Allan</i> , 43 Misc 3d 542 [Sup Ct Albany County 2014] .....	20
<i>Hymowitz v. Eli Lilly and Co.</i> , 73 NY2d 487 [1989] .....	6
<i>Johnson v. Douglas</i> , 187 Misc 2d 509 [Sup Ct Nassau County 2001] .....	15
<i>L.B. v. C.C.B.</i> , 77 Misc 3d 429 [Sup Ct Kings County 2022] .....	12
<i>Leighton v. City of New York</i> , 39 AD3d 84 [2d Dept 2007] .....	7
<i>Matter of Brooke S.B. v. Elizabeth A.C.C.</i> , 28 NY3d 1 [2016] .....	9
<i>Matter of Nonhuman Rights Project, Inc. v. Breheny</i> , 38 NY3d 555 [2022] .....	2, 3, 5, 10, 18, 22
<i>Matter of Nonhuman Rights Project, Inc. v. Stanley</i> , 49 Misc3d 746 [Sup. Ct. NY County 2015] .....	2, 13
<i>Millington v. Southeastern El. Co.</i> , 22 NY2d 498 [1968] .....	5, 17

<i>Mullaly v. People</i> , 86 NY 365 [1881] .....	22
<i>Naples v. Miller</i> , CIV.A.08C-01-093PLA, 2009 WL 1163504 [Del Super Ct Apr. 30, 2009] .....	15
<i>Rabideau v. City of Racine</i> , 243 Wis2d 486 [WI 2001] .....	15
<i>Rakaric v. Croation Cultural Club</i> , 76 AD2d 619 [2d Dept 1980] .....	6
<i>Raymond v. Lachmann</i> , 264 AD2d 340 [1st Dept 1999] .....	21
<i>Reno v D'Javid</i> , 85 Misc 2d 126 [Sup. Ct. 1976] .....	12
<i>Ross v. Louise Wise Services, Inc.</i> , 8 NY3d 478 [2007] .....	17
<i>Rozell v. Rozell</i> , 281 NY 106 [1939] .....	6
<i>Snead v. Socy. for Prevention of Cruelty to Animals of Pennsylvania</i> , 929 A2d 1169 [Pa Super Ct. 2007] .....	15
<i>Strickland v. Medlen</i> , 397 SW3d 184 [Tex 2013] .....	15
<i>The Nonhuman Rights Project v. Breheny</i> , No. 260441/19, 2020 WL 1670735 [Sup. Ct. Bronx County 2020] .....	2, 20
<i>Travis v. Murray</i> , 42 Misc 3d 447 [Sup. Ct. NY County 2013] .....	10
<i>Woods v. Lancet</i> , 303 NY 349 [1951] .....	6, 7, 8

<i>Young v. Delta Air Lines, Inc.</i> , 78 AD2d 616 [1st Dept 1980] .....	19
--	----

**Statutes**

Domestic Relations Law § 236 .....	12
EPTL 7-8.1 .....	13
Family Ct Act § 842 .....	13
PETS ACT .....	13

**Other Authorities**

AMBER L. SHEPARD, <i>The Duality of Dogs: Property or Person?</i> , 37 NOTRE DAME JL ETHICS & PUB POL'Y ONLINE SUPP 654 [2023] .....	10
Andrea Laurent-Simpson, <i>Andrea Laurent-Simpson: 'Dog Mom' and more – we're living in multispecies families now. Here's what it means</i> , FOX NEWS [July 31, 2021], <a href="https://bit.ly/4csln57">https://bit.ly/4csln57</a> .....	11
ANDREA LAURENT-SIMPSON, JUST LIKE FAMILY: HOW COMPANION ANIMALS JOINED THE HOUSEHOLD [2021] .....	11
Anna Brown, <i>About Half Of U.S. Pet Owners Say Their Pets Are As Much A Part Of Their Family As A Human Member</i> , PEW RESEARCH CENTER [July 7, 2024], <a href="https://bit.ly/4d08kcw">https://bit.ly/4d08kcw</a> .....	13
BENJAMIN N. CARDOZO, THE PARADOXES OF LEGAL SCIENCE [1928] .....	5
Black's Law Dictionary [12th ed. 2024] .....	16
Colleen Grablick, <i>Why a pet's death can hurt worse than losing a human loved one</i> , THE WASHINGTON POST [June 25, 2024], <a href="https://bit.ly/4dE3FwD">https://bit.ly/4dE3FwD</a> .....	17
David Seeley, <i>Is Your Pet Family? SMU Sociologist Says "Multispecies Families" Impact Birth Rate, Job Location, Disasters, and More</i> , DALLAS INNOVATES, <a href="https://bit.ly/3Ah8FsS">https://bit.ly/3Ah8FsS</a> [July 13, 2001] .....	11

James McKinley Jr., <i>Arguing in Court Whether 2 Chimps Have the Right to ‘Bodily Liberty’</i> , NY TIMES [May 27, 2015], <a href="https://bit.ly/3umXQIO">https://bit.ly/3umXQIO</a> .....	2
Jay M. Zitter, Annotation, <i>Recovery of Damages for Emotional Distress Due to Treatment of Pets and Animals</i> , 91 A.L.R. 5th 545 [2001] .....	14
Jill Lepore, <i>The Elephant Who Could be a Person</i> , THE ATLANTIC [Nov. 16, 2021], <a href="https://bit.ly/41lGIog">https://bit.ly/41lGIog</a> .....	3
JOYCE TISCHLER, <i>A Brief History of Animal Law, Part II (1985 - 2011)</i> , 5 STAN J ANIMAL L. & POL'Y 27 [2012]) .....	14
Mallory Diefenbach, <i>Orleans County issues first habeas corpus on behalf of elephant</i> , THE DAILY NEWS [Nov. 21, 2018], <a href="https://bit.ly/3AwkCWV">https://bit.ly/3AwkCWV</a> .....	2
Oliver Staley, <i>How America’s love for its cats and dogs built the pet industrial complex</i> , QUARTZ [Jan. 10, 2021], <a href="https://bit.ly/3WFHAXQ">https://bit.ly/3WFHAXQ</a> .....	13
OLIVER WENDELL HOLMES, JR., <i>The Path of the Law</i> , 10 HARV. L. REV. 457 [1897] .....	7
PAMELA FRASCH, JOYCE TISCHLER, <i>Animal Law: The Next Generation</i> , 25 ANIMAL L. 303 [2019] .....	13
Paul Vinogradoff, <i>Common Sense in Law</i> [H.G. Hanbury ed., 2d ed. 1946] .....	16
SARA MICKOVIC, <i>Fur-Ever Homes After Divorce: The Future of Pet Custody</i> , 28 ANIMAL L. 47 [2022] .....	12
Senate Introducer's Mem in Support, Bill Jacket, L 2021, ch 509 .....	13
STEVEN M. WISE, <i>Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of A Companion Animal</i> , 4 ANIMAL L. 33 [1998] .....	19
STEVEN NADLER, THE CAMBRIDGE COMPANION TO MALEBRANCHE [2000] .....	18

William Brangham, *How did Katrina change how we evacuate  
pets from disaster?*, PBS [Aug. 29, 2015], <https://bit.ly/3SJZjfB> ..... 11



## **INTEREST OF AMICUS CURIAE**<sup>1</sup>

Founded in 1995 by Attorney Steven M. Wise, Amicus Curiae Nonhuman Rights Project, Inc. (“NhRP”) is the only civil rights organization in the United States dedicated solely to securing rights for nonhuman animals. NhRP exists to challenge an archaic, unjust status quo that views and treats nonhuman animals as “things.” In furtherance of its mission, since December 2013, NhRP has filed habeas corpus petitions seeking to secure the right to liberty of chimpanzees and elephants in New York, Connecticut, California, Michigan, Hawaii, and Colorado.<sup>2</sup>

Two of NhRP’s New York cases illustrate the ever-evolving relationship between human beings and other animals, as reflected in judicial actions that previously would have been unthinkable. In 2015, the Supreme Court, New York County, issued the world’s first habeas corpus order for imprisoned nonhuman animals (two chimpanzees named Hercules and Leo), requiring a merits hearing to

---

<sup>1</sup> Amicus curiae files this brief pursuant to this Court’s July 15, 2024 Order (NYSCEF Doc. No. 44), which states: “The Court will accept amicus curiae briefs on the issue presented, to wit, whether a pedestrian possesses a cause of action for infliction of emotional distress resulting from witnessing the family dog being struck by a vehicle as she walked it on a leash across the street in a crosswalk and she herself was nearly killed.” No party or party’s counsel contributed content to this brief or otherwise participated in its preparation, or contributed money intended to fund the brief’s preparation or submission. No person or entity, other than amicus or their counsel, contributed money intended to fund the brief’s preparation or submission.

<sup>2</sup> (See <https://www.nonhumanrights.org/our-clients/>).

determine the lawfulness of their detention. (*Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc3d 746, 748 [Sup Ct NY County 2015]). At the hearing, Justice Barbara Jaffe asked: “Isn’t it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law?”<sup>3</sup> In 2018, the Supreme Court, Orleans County, issued the world’s first habeas corpus order for an imprisoned elephant (Happy).<sup>4</sup> Following a transfer of venue, the Supreme Court, Bronx County, heard thirteen hours of oral argument over three days and concluded that NhRP’s arguments were “extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo” to an elephant sanctuary. (*The Nonhuman Rights Project v. Breheny*, No. 260441/19, 2020 WL 1670735, \*10 [Sup Ct Bronx County 2020] (“*Breheny (Trial Court)*”).

This Court’s July 15, 2024 Order (NYSCEF Doc. No. 44) referenced NhRP’s case on behalf of Happy, decided by the Court of Appeals in *Matter of Nonhuman Rights Project, Inc. v. Breheny*, (38 NY3d 555 [2022]). Harvard historian Jill Lepore

---

<sup>3</sup> (James McKinley Jr., *Arguing in Court Whether 2 Chimps Have the Right to ‘Bodily Liberty’*, N.Y. TIMES [May 27, 2015], <https://bit.ly/3umXQIO>).

<sup>4</sup> (Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, THE DAILY NEWS [Nov. 21, 2018], <https://bit.ly/3AwkCWV>).

described it as “the most important animal-rights case of the 21st century.”<sup>5</sup> *Breheny* marked the first time a state high court decided whether a nonhuman animal has the right to bodily liberty, and while the Court ruled “no” in a 5-2 vote, the decision included two historic, groundbreaking dissents—spanning over 80 pages—from now-Chief Judge Rowan Wilson and Judge Jenny Rivera. Those dissents found that the common-law writ of habeas corpus was available for an elephant to challenge her unjust confinement at a zoo.

While this case is not a habeas corpus case or one about securing rights for nonhuman animals, it involves issues highly relevant to NhRP’s work, specifically the evolving legal status of nonhuman animals, the role and duty of common law courts, and the fundamental demands of justice driven by evolving societal norms. Given NhRP’s commitment in the just and compassionate development of the common law as it pertains to the legal status of nonhuman animals, we have a keen interest in the case’s outcome and how it is decided.

## **INTRODUCTION**

Plaintiff Nan Deblase asserts a common law cause of action based on the allegation that, while walking her son’s dog across the street in a crosswalk, she observed a vehicle striking the dog and was herself in danger of being struck. Had

---

<sup>5</sup> (Jill Lepore, *The Elephant Who Could be a Person*, THE ATLANTIC, [Nov. 16, 2021], <https://bit.ly/411GI0g>).

the family dog been a human parent, spouse, child, or grandchild, there is no question Plaintiff would be able to pursue a claim of bystander recovery under the zone of danger theory, which allows one who is threatened with bodily harm, resulting from a defendant's negligence, to recover for emotional distress suffered as a consequence of witnessing the serious injury or death of the plaintiff's "immediate family." (*See Greene v. Esplanade Venture Partnership*, 36 NY3d 513, 516 [2021]).

The precise question here is whether the family dog—despite not being human—can nonetheless be Plaintiff's "immediate family" for purposes of applying the zone of danger rule. The fact that the family dog has not yet been recognized as "immediate family" does not end the analysis, for the common law is not an anachronism, and its genius lies in its flexibility and capacity for growth and adaptation. Because the common law, by its very nature, evolves in accord with changing societal norms and the demands of justice, this Court must decide whether the legal status quo concerning the family dog should change.

To assist the Court's analysis, this brief argues (a) the role and duty of common law courts is to align the law with evolving societal norms and the demands of justice, and (b) those considerations support including the family dog within one's "immediate family" for purposes of the zone of danger rule. Crucially, the fact that dogs are not members of the human species should have no relevance to the Court's determination.

## ARGUMENT

### **A. The role and duty of common law courts is to align the law with evolving societal norms and the demands of justice.**

“[T]he fundamental role of a common-law court [is] to adapt the law as society evolves.” (*Breheny*, 38 NY3d at 617 [Wilson, J., dissenting]). At its core, the law “reflects normative judgments about the behaviors we want to allow, encourage, discourage or prohibit,” reflecting “our society’s values and aspirations.” (*Id.* at 613). As Judge Wilson explained, the law inevitably changes as societal norms evolve:

It is impossible for the law to remain static; as society changes, the law accommodates those changes, at minimum considering how the law as it exists applies to novel situations and changes in society, and sometimes shedding ancient decisions or creating new legal doctrines to accommodate new knowledge, beliefs and challenges. The law and social norms, then, are constantly in conversation with one another; oftentimes changes in social norms lead to changes in the law; other times, the law changes in attempt to adjust the prevailing social norms. "The moral code of each generation, this amalgam of custom and philosophy and many an intermediate grade of conduct and belief, supplies a norm or standard of behavior which struggles to make itself articulate in law. . . . The same pressure is at work in making the law declared by the Courts" (Benjamin N. Cardozo, *The Paradoxes of Legal Science* 17 [1928]).

(*Id.*).

The common law is thus “not an anachronism, but is a living law which responds to the surging reality of changed conditions.” (*Millington v. Southeastern El. Co.*, 22 NY2d 498, 509 [1968], quoting *Gallagher v. St. Raymond's R.C. Church*,

21 NY2d 554, 558 [1968]). Its genius “lies in its flexibility and in its adaptability to the changing nature of human affairs,” as well as “its ability to enunciate rights and to provide remedies for wrongs where previously none had been declared.” (*Rozell v. Rozell*, 281 NY 106, 112 [1939]). Expanding with reason, the common law grows and moves in response “to the larger and fuller development of the nation.” (*Id.* [citation omitted]; *see also Funk v. United States*, 290 US 371, 383 [1933] [“the common law is not immutable but flexible, and by its own principles adapts itself to varying conditions”]).

At the “heart of our common-law system” are the “ever-evolving dictates of justice and fairness.” (*Hymowitz v. Eli Lilly and Co.*, 73 NY2d 487, 507 [1989]). Courts “act in the finest common-law tradition when we adapt and alter decisional law to produce common-sense justice.” (*Woods v. Lancet*, 303 NY 349, 355 [1951]). Indeed, common law courts are duty-bound to “bring the law into accordance with present day standards of wisdom and justice rather than with some outworn and antiquated rule of the past,” including when “traditional common-law rules of negligence result in injustice.” (*Id.* [internal quotation and citation omitted]; *see also Rakaric v. Croation Cultural Club*, 76 AD2d 619, 631 [2d Dept 1980] [“The ever changing demands of society have cast upon the courts an obligation to adjust the laws from time to time to such trends as may be necessary in order to achieve basic justice.”]).

It is the role and duty of courts to update archaic common law in accordance with evolving societal norms and the demands of justice. Courts “abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule.” (*Woods*, 303 NY at 355). Thus, where “a court is asked to mechanically apply a court-made rule that lacks justification in theory, and which, in practice, produces arbitrary and disparate results, it is the duty of the court to inquire into its continued viability and, if appropriate, reformulate the rule or abolish it completely.” (*Greene v. Esplanade Venture Partnership*, 172 AD3d 1013, 1016 [2d Dept 2019] [Miller, J., dissenting], *revd*, 36 NY3d 513 [2021]).<sup>6</sup>

Because “negligence is a question of common law which may be revised by the courts,” (*Leighton v. City of New York*, 39 AD3d 84, 86 [2d Dept 2007]), the foregoing principles apply to the question of whether the family dog should be included within one’s “immediate family” under the zone of danger rule.

**B. Evolving societal norms and the demands of justice support including the family dog within one’s “immediate family” for purposes of the zone of danger rule.**

Societal norms have evolved such that dogs have become cherished family members in multispecies households, making their untimely deaths acutely

---

<sup>6</sup> “It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.” (OLIVER WENDELL HOLMES, JR., *The Path of the Law*, 10 HARV. L. REV. 457, 469 [1897]).

heartbreaking and tragic. Because these nonhuman animals hold a special place in society, it is manifestly unjust to deny a negligence victim the ability to recover for their emotional injuries resulting from witnessing the wrongful death of a family dog. New York common law regarding the state's zone of danger jurisprudence should therefore conform to present times, not remain stuck "in the Plantagenet period." (*Woods*, 303 NY at 355 [citation omitted]).

**1. *Greene v. Esplanade Venture Partnership* does not preclude the family dog from being included within one's "immediate family."**

The zone of danger rule "allows one who is . . . threatened with bodily harm in consequence of the defendant's negligence to recover for emotional distress flowing only from the viewing [of] the death or serious physical injury of a member of his or her immediate family." (*Greene*, 36 NY3d at 522 [cleaned up]). In *Greene*, the Court of Appeals' most recent decision on bystander zone of danger law, the Court considered whether the common-law term "immediate family" should be expanded to encompass a grandchild. (*Id.* at 516.). Pointing to "our increasing legal recognition of the special status of grandparents, shifting societal norms, and common sense," the Court concluded that a plaintiff's "grandchild is 'immediate family' for the purpose of applying the zone of danger rule." (*Id.*).

Significantly for this case, and contrary to Defendant's suggestion (NYSCEF Doc No. 18, Deborah C. Zachary Aff. ¶ 6), *Greene* did *not* establish the "outer



limits” of the phrase “immediate family.” In fact, the Court expressly declined to do so:

Unsettled at this juncture, however, are “the outer limits” of the phrase “immediate family.” Once again, we are not asked to fix permanent boundaries of the “immediate family.” Instead, our task simply is to determine whether a grandchild may come within the limits of her grandparent’s “immediate family,” as that phrase is used in zone of danger jurisprudence.

(*Id.* [citation omitted]).

The Court noted such an approach is consistent with its decision in *Bovsun v. Sanperi*, (61 NY2d 219 [1984]), which adopted the zone of danger rule and applied it to spouses and parents, but importantly, “did not establish exhaustive boundaries with respect to the universe of ‘immediate family members.’” (*Id.* at 518; *see id.* [“*Bovsun* was not an exercise in line-drawing.”]). This makes sense given that the composition of family units has evolved—and continues to evolve—“beyond traditional legal notions of blood relation or consanguinity.” (*Id.* at 524).<sup>7</sup>

---

<sup>7</sup> (See, e.g., *Matter of Brooke S.B. v. Elizabeth A.C.C.*, 28 NY3d 1, 26 [2016] [overruling strict definition of “parent” that excluded non-biological and non-adoptive caregivers]; *Braschi v. Stahl Assoc. Co.*, 74 NY2d 201, 207 [1989] [rejecting Appellate Division’s holding that “family” in New York’s rent control code is limited to “family members within traditional, legally recognized familial relationships”] [citation omitted]; *see also Greene*, 36 NY3d at 541-42 [Rivera, J., concurring] [citing cases in which biologically unrelated individuals were considered part of a “family”]).

Because the boundaries of “immediate family” is an issue that “remains open,” (*id.* at 526), *Greene* does not foreclose the possibility of nonhuman animals being included in one’s “immediate family.” Roles and perspectives pertaining to family structures change, and “[w]hat once was accepted as a basic social premise must be carefully examined in a way that reflects the realities of both our changing legal landscape and our lives.” (*Id.* at 525-26).

## **2. Societal norms regarding the family dog have evolved.**

The status of companion animals has radically changed since this country’s founding.<sup>8</sup> “Early America had a strictly property-based view of animals,” but “[o]ver the last two centuries, that view has greatly eroded.” (*Breheny*, 38 NY3d at 603 [Wilson, J., dissenting]). Today “domesticated pets have become *important members of families*, and the law has accounted for the role they play in people’s lives.” (*Id.* at 606 [emphasis added]). “Where once a dog was considered a nice accompaniment to a family unit, it is now seen as an actual member of that family, vying for importance alongside children.” (*Travis v. Murray*, 42 Misc 3d 447, 451 [Sup Ct NY County 2013]). During Hurricane Katrina, it was no mystery why thousands of people refused to evacuate New Orleans rather than leave their nonhuman family members behind, even when that meant, in many cases, dying in

---

<sup>8</sup> (See generally AMBER L. SHEPARD, *The Duality of Dogs: Property or Person?*, 37 NOTRE DAME JL ETHICS & PUB POL’Y ONLINE SUPP 654, 656-60 [2023] [describing the historical status of dogs since the eighteenth century]).

the floods. (William Brangham, *How did Katrina change how we evacuate pets from disaster?*, PBS [Aug. 29, 2015], <https://bit.ly/3SJZjfB>).

Professor Andrea Laurent-Simpson, a sociologist at Southern Methodist University, has demonstrated how “the multispecies family has developed in the context of increasing diversification of family structures within the United States,” and that “familial identities (such as ‘parent,’ ‘grandparent,’ and ‘sibling’) have adjusted to include the family dog and/or cat as a specific category of family member, including ‘child,’ ‘grandchild,’ and ‘sibling.’” (ANDREA LAURENT-SIMPSON, *JUST LIKE FAMILY: HOW COMPANION ANIMALS JOINED THE HOUSEHOLD* 23 [2021]; see David Seeley, *Is Your Pet Family? SMU Sociologist Says “Multispecies Families” Impact Birth Rate, Job Location, Disasters, and More*, DALLAS INNOVATES [July 13, 2001], <https://bit.ly/3Ah8FsS>; [“American pet-owners are transforming the cultural definition of family,” as “[d]ogs and cats are treated like children, siblings, grandchildren.”]).<sup>9</sup>

As the Second Department recognized nearly sixteen years ago, “[t]he reach of our laws has been extended to animals in areas which were once reserved only for

---

<sup>9</sup> Professor Laurent-Simpson has shown “it’s obvious pets are more than generic ‘family members,’” following “100 hours of observations in a veterinary clinic, dozens of interviews with pet owners and an analysis of scores of print advertisements flooding media.” (Andrea Laurent-Simpson, *Andrea Laurent-Simpson: ‘Dog Mom’ and more – we’re living in multispecies families now. Here’s what it means*, FOX NEWS [July 31, 2021], <https://bit.ly/4csln57>).

people.” (*Feger v. Warwick Animal Shelter*, 59 AD3d 68, 72 [2d Dept 2008]). This is significant because “statutes can serve as an appropriate and seminal source of public policy to which common-law courts can refer.” (*Reno v D'Javid*, 85 Misc 2d 126, 129 [Sup Ct NY County 1976]; *see, e.g., Greene*, 36 NY3d at 525 [the “special status” of grandparents embodied in legislation warrants their inclusion “in the common-law term ‘immediate family’”]).

Especially important in the context of this case is Domestic Relations Law § 236 (B) (5) (d) (15), passed in 2021, which requires a court to consider “the best interest” of a companion animal in divorce or separation proceedings—a dramatic change from when pet custody disputes were resolved solely based on the litigants’ property rights in the animal. (*See generally L.B. v. C.C.B.*, 77 Misc 3d 429, 434-36 [Sup Ct Kings County 2022]). This statute, reflecting a more enlightened view of companion animals, treats them akin to human children.<sup>10</sup> The justification for its passage was the fact that in many households, “companion animals usually become members of the family,” and that “pets are the equivalent of children” for many

---

<sup>10</sup> Similar pet custody legislation has been enacted in Alaska, Illinois, and California. (*See generally* SARA MICKOVIC, *Fur-Ever Homes After Divorce: The Future of Pet Custody*, 28 ANIMAL L. 47, 57-60 [2022]).

families. (*C.M. v. E.M.*, 82 Misc 3d 198, 216-17 [Sup Ct Nassau County 2023], quoting Senate Introducer's Mem in Support, Bill Jacket, L 2021, ch 509 at 6).<sup>11</sup>

New York law also “now recognizes the creation of trusts for the care of designated domestic or pet animals upon the death or incapacitation of their owner (*see* EPTL 7-8.1),” and companion animals “may now be included as protected parties when orders of protection are issued in domestic disputes (*see* Family Ct Act § 842).” (*Feger*, 59 AD3d at 72; *see also Stanley*, 49 Misc3d at 766 [“legislatures and courts recognize the close relationships that exist between people and their pets, who are often viewed and treated by their owners as family members”]).<sup>12</sup>

---

<sup>11</sup> According to a 2023 survey, “nearly all U.S. pet owners (97%) say their pets are part of their family,” and “[a]bout half of pet owners (51%) not only consider their pets to be a part of their family but say they are *as much a part of their family as a human member*.” (Anna Brown, *About Half Of U.S. Pet Owners Say Their Pets Are As Much A Part Of Their Family As A Human Member*, PEW RESEARCH CENTER [July 7, 2024], <https://bit.ly/4d08kcw>). These statistics are reflected in the emergence of the “pet industrial complex,” where “a massive industry has developed to feed and care for” companion animals. (Oliver Staley, *How America’s love for its cats and dogs built the pet industrial complex*, QUARTZ [Jan. 10, 2021], <https://bit.ly/3WFHAXQ>). “Americans spent nearly \$100 billion on pets and pet care in 2020,” which is more than “what they spend on smartphones or at the movies, combined, and greater than the GDP of Ethiopia.” (*Id.*). It is an obvious social fact that the bonds formed between humans and nonhuman animals in multispecies families “transcend simple economic considerations.” (*Id.*).

<sup>12</sup> “[A]ll fifty states and the District of Columbia now have ‘pet trust’ laws on their books, which enable guardians to create legally enforceable arrangements for the care of their animal companions.” (PAMELA FRASCH, JOYCE TISCHLER, *Animal Law: The Next Generation*, 25 ANIMAL L. 303, 316 [2019]). “In at least thirty-five states, dogs may now be covered by domestic violence orders of protection.” (SHEPARD, *supra* note 8, at 669). Additionally, Congress passed the PETS ACT in response to

Reflecting prevailing societal sentiments and attitudes, recovery for emotional distress damages resulting from the injury or death of a pet has been allowed by courts in Alaska, California, Florida, Hawaii, Idaho, Kentucky, Puerto Rico, and Washington. (See generally *Anne Arundel County v. Reeves*, 474 Md 46, 80-81 [Md 2021] [Hotten, J., dissenting], citing, *inter alia*, Jay M. Zitter, Annotation, *Recovery of Damages for Emotional Distress Due to Treatment of Pets and Animals*, 91 A.L.R. 5th 545 § 3 [2001]).

Even courts that have denied recovery for such damages have acknowledged the special status of companion animals in multispecies households, especially the special status of dogs. For example, the Wisconsin Supreme Court, in a case involving a claim of negligent infliction of emotional distress by a plaintiff whose dog was shot and killed by a police officer, felt compelled to acknowledge the obvious:

A companion dog is not a fungible item, equivalent to other items of personal property. A companion dog is not a living room sofa or dining room furniture. This term [property] inadequately and inaccurately describes the relationship between a human and a dog.

---

Hurricane Katrina, requiring “state and local emergency preparedness authorities to include provisions for pets and service animals in their evacuation plans in order to qualify for grants from the Federal Emergency Management Agency.” (JOYCE TISCHLER, *A Brief History of Animal Law, Part II (1985 - 2011)*, 5 STAN J ANIMAL L. & POL'Y 27, 35 [2012]).

(*Rabideau v. City of Racine*, 243 Wis2d 486, 491-92 [WI 2001]; see *Johnson v. Douglas*, 187 Misc 2d 509, 510 [Sup Ct Nassau County 2001] [“There is no doubt that some pet owners have become so attached to their family pets that the animals are considered members of the family. This is particularly true of owners of domesticated dogs who have been repeatedly referred to as ‘Man's Best Friend’ and a faithful companion.”]; *Strickland v. Medlen*, 397 SW3d 184, 185 [Tex 2013] [“Throughout the Lone Star State, canine companions are treated—and treasured—not as mere personal property but as beloved friends and confidants, even family members.”]; *Naples v. Miller*, CIV.A.08C-01-093PLA, 2009 WL 1163504, at \*3 [Del Super Ct Apr. 30, 2009] [“the Court is mindful that dogs are often beloved family members”]; *Snead v. Socy. for Prevention of Cruelty to Animals of Pennsylvania*, 929 A2d 1169, 1174 [Pa Super Ct 2007] [“this court clearly recognizes that dogs as pets hold a unique place in many people's lives as friend, companion, and family member”]; *Carcaldi v. McKenzie*, DBDCV136013956S, 2014 WL 2257138, \*1 [Conn Super Ct Apr. 24, 2014] [“It is an unassailable truth that dogs such as Benjie can and often do have the status of dearly loved, highly valued, and integral members of many family units.”].

Accordingly, it is undeniable that societal norms regarding the family dog have evolved—and evolved to the point of supporting a change in the common law.

The following observations in a Texas concurring opinion from 30 years ago are even more relevant and true today:

The law must be informed by evolving knowledge and attitudes. Otherwise, it risks becoming irrelevant as a means of resolving conflicts. . . . The law should reflect society’s recognition that animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live. In doing so, courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the *only* family members they have.

(*Bueckner v. Hamel*, 886 SW2d 368, 377-78 [Tex App 1994] [Andell, J., concurring]). Today, in a society of ever-increasing multispecies families, New York’s zone of danger jurisprudence should reflect “the realities of both our changing legal landscape and our lives.” (*Greene*, 36 NY3d at 525).

**3. Excluding the family dog from one’s “immediate family” is contrary to the demands of justice.**

The current state of the common law is untenable to the point of injustice. “Justice” is “[t]he quality of being fair or reasonable.” (*Justice*, Black's Law Dictionary [12th ed. 2024]). “[L]aw cannot be divorced from morality in so far as it clearly contains . . . the notion of right to which the moral quality of justice corresponds.” (*Id.* quoting Paul Vinogradoff, *Common Sense in Law* 19–20 [H.G. Hanbury ed., 2d ed. 1946]). Because societal norms regarding the family dog have evolved, excluding the family dog from one’s “immediate family” for purposes of the zone of danger rule is unjust.



“It is fundamental to our common-law system that one may seek redress for every substantial wrong.” (*Battalla v. State of New York*, 10 NY2d 237, 240 [1961]). As the Court of Appeals recognized over half a century ago, “the law of torts must recognize the interest of persons in the protection of essentially emotional interests, and that this tendency has found expression in New York law.” (*Millington*, 22 NY2d at 507; *see also Ferrara v. Galluchio*, 5 NY2d 16, 21 [1958] [“Freedom from mental disturbance is now a protected interest in this State”]). Compensatory damages redress injuries caused by wrongful conduct; they are “intended to have the wrongdoer make the victim whole—to assure that the victim receive[s] fair and just compensation commensurate with the injury sustained.” (*Ross v. Louise Wise Services, Inc.*, 8 NY3d 478, 489 [2007]).

However, by excluding the family dog from one’s “immediate family,” a zone of danger plaintiff who suffers emotional injuries from witnessing the tragic injury or death of a beloved nonhuman family member would have no right to seek redress for a substantial wrong—and thereby have no right to be made whole, to receive fair and just compensation. Such a harsh result “would be unjust, as well as opposed to experience and logic.” (*Battalla*, 10 NY2d at 239). For it would fail to take seriously the reality that experiencing the death of a family dog is profoundly and uniquely devastating. (See Colleen Grablick, *Why a pet’s death can hurt worse than losing a*

*human loved one*, THE WASHINGTON POST [June 25, 2024], <https://bit.ly/4dE3FwD>]).

There are two anachronistic reasons for excluding the family dog from one’s “immediate family”: (1) dogs are not members of the species *Homo sapiens*, and (2) dogs are merely personal property, akin to inanimate objects like pencils, tables, chairs, and toasters. As both reasons reflect arbitrary, irrational, and unfair thinking, they must be rejected as antithetical to justice. (See *Broadnax v. Gonzalez*, 2 NY3d 148, 156 [2004] [“To be sure, line drawing is often an inevitable element of the common-law process,” but it “does not justify our clinging to a line that has proved indefensible.”]).

*First, dogs are not human.* The crude exclusion of dogs from one’s “immediate family”—solely based on biology—is not only arbitrary but grossly out of tune with the social reality (discussed above) that these companion animals are recognized as integral family members, often equivalent to human children. This might have made sense in an era when nonhuman animals—as infamously contended by seventeenth-century philosopher René Descartes—were thought to be insentient, unfeeling machines that “eat without pleasure, cry without pain, grow without knowing it, desire nothing, fear nothing, and know nothing.” (*Breheny*, 38 NY3d at 607 [Wilson, J., dissenting], quoting Steven Nadler, *The Cambridge*

Companion to Malebranche 42 [2000]). Needless to say, the wholly unscientific and ludicrous views of bygone times should have no bearing today.

*Second, dogs are mere property.* This view has been entrenched in judicial decisions and reflexively perpetuated again and again without compelling justification. For example, the First Department once held that a plaintiff could not recover for “mental suffering and emotional disturbance as an element of damages” caused by the negligent death of his dog, analogizing the death to a case in which similar recovery was denied for the loss of luggage. (*Young v. Delta Air Lines, Inc.*, 78 AD2d 616, 616 [1st Dept 1980], citing *Cohen v. Varig Airlines (S.A. Empresa de Viacao Aerea Rio Grandense)*, 62 AD2d 324, 336 [1st Dept 1978]).<sup>13</sup>

However, “[s]ociety has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, *mere property*,” (*Bueckner*, 886 SW2d at 377-78 [Andell, J., concurring]), and so should courts. The Second

---

<sup>13</sup> (See generally STEVEN M. WISE, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of A Companion Animal*, 4 ANIMAL L. 33, 82-84 [1998] [detailing New York cases where emotional distress damages were denied for the wrongful death of a companion animal, and showing they contain no analysis beyond stating that such animals are personal property]). “The judicial ‘animals as property’ syllogism (that one may never recover damages for emotional distress and loss of society for the negligent destruction of property, that companion animals are property, and therefore one may never recover damages for emotional distress for the negligent destruction of companion animals) both unthinkingly perpetuates anachronistic and unprincipled legal rules and ignores substantive factors that the common law should consider.” (*Id.* at 42).

Department (as well as the First) has rejected the crude and offensive equivalence between companion animals and inanimate objects, at least in certain contexts. These nonhuman animals are now a “special category of property,” “treated differently from other forms of property,” which is “consistent with the laws of the State and the underlying policy inherent in these laws to protect the welfare of animals.” (*Feger*, 59 AD3d at 72; *Hennet v. Allan*, 43 Misc 3d 542, 547 [Sup Ct Albany County 2014] [applying the notion that “pets should be recognized as a ‘special category of property,’” and holding that reference to “personal property” in a release agreement did not extend to a dog]; *see also Breheny (Trial Court)*, 2020 WL 1670735 at \*10 [“This Court agrees that Happy [the elephant] is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.”]).

Given the place of dogs as integral family members in multispecies households, their designation “as mere personal property belies common experience, cultural values, and societal expectations.” (*Reeves*, 474 Md at 84 [Hotten, J., dissenting]). Treating dogs as mere property “erases a dog’s intrinsic attributes as a living being and the irreplaceable instinct to love and protect human companions.” (*Id.*). Unlike an inanimate object, a dog “welcomes its human companion after a day at work, protects its human companion when in danger, and exhibits behavior and

emotions that is consistent with grief and distress when its human companion is ill, injured, or passes away.” (*Id.*).

To say a dog is “a piece of personal property and no more is a repudiation of our humaneness.” (*Corso v. Crawford Dog and Cat Hosp., Inc.*, 97 Misc 2d 530, 531 [Civ Ct Queens County 1979]). Because of the “cherished status accorded to pets in our society,” (*Raymond v. Lachmann*, 264 AD2d 340, 341 [1st Dept 1999]), consigning dogs to “eighteenth-century notions of property” denies them “the dignity abundantly ascribed” by society, for they are “widely considered best friends, guardians, and members of the family.” (*Reeves*, 474 Md at 87-88 [Hotten, J., dissenting]). Indeed, “[f]ormalistic adherence to classifying pets as property dredges up the law’s ignominious history of treating living beings, notably slaves and women, as property not legal persons.” (*Id.* at 87). “The law should reflect the importance and centrality of pets to individual families and society as a whole.” (*Id.*).<sup>14</sup>

To be clear, expanding the zone of danger doctrine would not require holding that dogs are *not* property. As a conceptual matter, property and “immediate family”

---

<sup>14</sup> (*See also Carbasho v. Musulin*, 217 W Va 359, 363 [2005] [Starcher, J., dissenting] [criticizing majority opinion denying emotional distress damages for the negligent death of a dog, on the ground that dogs are personal property, as “simply medieval”; “[t]here was nothing stopping the majority from changing th[e] common law other than their lack of concern for pet owners and the emotional bonds that exist between owners and their pets.”]).

are not mutually exclusive categories. Just as nonhuman animals are both property and possessors of “numerous rights” under New York law, with “the right not to be tortured, killed unjustifiably, abandoned or neglected; the right to have medical providers report suspected cases of abuse; the right of domestic animals to have trusts made in their behalf enforced by courts; and the right to have their best interests considered when those with legal custody over them are divorcing,” (*Breheny*, 38 NY3d at 586 [Wilson, J., dissenting]), dogs can be both property and “immediate family” for purposes of the zone of danger rule.<sup>15</sup>

Over 140 years ago, the Court of Appeals eliminated the common law rule that stealing a dog was not larceny in *Mullaly v. People*, (86 NY 365 [1881]), which Defendant cites for the proposition that pets are personal property. (NYSCEF Doc No. 18, Deborah C. Zachary Aff. ¶ 12). The Court’s observation regarding the relevance of anachronistic common law rules is instructive here: “The artificial reasoning upon which these rules were based are wholly inapplicable to modern society. *Tempora mutantur et leges mutantur in illis* [Times change and the laws change with them].” (*Mullaly*, 86 NY at 367).

---

<sup>15</sup> This Court’s order (NYSCEF Doc. No. 44) noted *Breheny*’s observation that implicit in statutes is “a plain endorsement of the legal distinction between human beings and nonhuman animals.” (38 NY3d at 576). This distinction does not bar expansion of the zone of danger doctrine here. As judicial evolution of the common law in this instance would not eliminate the property status of dogs, or even grant them rights, it would be fully consistent with the legal distinction between humans and nonhuman animals.

In short, neither species membership nor property status is a legitimate reason for excluding the family dog from one’s “immediate family.” Such exclusion is contrary to justice as it prevents negligence victims who witness the tragic injury or death of a beloved nonhuman family member from being made whole. Times have changed, and so should the common law regarding New York’s zone of danger jurisprudence.

**CONCLUSION**

For the foregoing reasons, NhRP respectfully submits that the family dog should be included within one’s “immediate family” for purposes of applying the zone of danger rule.

August 15, 2024

Respectfully submitted,

NONHUMAN RIGHTS PROJECT, INC.

*Spencer Lo*

Spencer Lo

Elizabeth Stein

611 Pennsylvania Avenue SE #345

Washington, DC 20003

(646) 207-6357

[slo@nonhumanrights.org](mailto:slo@nonhumanrights.org)

*Attorneys for Amicus Curiae*

## **WORD COUNT CERTIFICATION**

Pursuant to Uniform Rules § 202.8-b, I hereby certify that this Amicus Curiae Brief complies with the word count limit of 7,000 words set forth therein. The total number of words in this Amicus Curiae Brief, exclusive of any captions, tables of contents, tables of authorities and signature blocks, is 5,756 words. The undersigned relied on the word count function in Microsoft Word in making this determination.

Dated: August 15, 2024

*Spencer Lo*  

---

Spencer Lo