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THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JOEL BAN and NONHUMAN RIGHTS PROJECT, INC., on behalf of itself and its Utah-based supporters, *Plaintiffs,* v. STATE OF UTAH; DEREK BROWN, in his official capacity as the Attorney General of the State of Utah; SPENCER COX, in his official capacity as the Governor of Utah, *Defendants*.	**PLAINTIFFS' MEMORANDUM OPPOSING MOTION AUTHORIZED BY RULE 12(b)** Case No.: 250900869 Judge: Hon. Robert Faust

Pursuant to Utah Rule of Civil Procedure ("URCP") 7(d), Plaintiff Nonhuman Rights Project, Inc. ("NhRP"), by and through undersigned counsel, hereby opposes Defendants State of Utah, Derek Brown, and Spencer Cox's ("Defendants") Motion to Dismiss the Complaint pursuant to URCP 12(b)(1), (6) ("MTD"). For the reasons set forth below, the NhRP respectfully requests that the Court deny the MTD.

INTRODUCTION

Through its Complaint, the NhRP seeks a declaration that it is unconstitutional for the 2024 Utah Legislature to forever bar the Utah judiciary, and all future Utah legislative assemblies, from granting or recognizing nonhuman entities as legal "persons." Contrary to the Defendants' mischaracterizations in the MTD, this case is not an attempt to extend legal personhood to nonhuman entities (which include, but are not limited to, nonhuman animals). Therefore, their repeated reliance on variations of the argument that the NhRP cannot "define which nonhuman entities should receive legal personhood status with its associated rights and which should not," is a red herring. MTD at 13. Furthermore, this case is not an attempt to acquire "an advisory opinion with no real-world impact," *id.* at 9, and it is unknown how matters involving "chimpanzees in a roadside zoo" or "internationally born elephants" relate here. *Id.* at 10.

As a concept, legal personhood is not synonymous with being human; it is a juridical category rather than a biological one. Leading jurisprudential scholars have long explained that the term "person" refers to any entity possessing one or more legal rights. *See Person*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("a person is any being whom the law regards as capable of rights or duties," and "[a]ny being that is so capable is a person, whether a human being or not") (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)); Richard Tur, *The "Person" in Law*, *in* PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY 121-22 (1987) ("[L]egal personality can

be given to just about anything. . . . It is an empty slot that can be filled by anything that can have rights or duties.").[1]

Admittedly, Utah's courts and legislative assemblies may never grant legal personhood to nonhuman entities, either because those claims will be rejected or because the issue never arises, but that is very different from being precluded from granting legal personhood because of House Bill ("H.B.") 249's universal bar.[2] As stated in the Complaint, "the legislature may create, define, and modernize the law. However, the legislature does not have unbridled power to deny individuals their common law rights and remedies. Nor can it constitutionally usurp the judiciary's proper sphere of action in common law matters." Compl. ¶ 12. For the reasons outlined herein, the NhRP respectfully requests that this Court deny Defendants' MTD.

ARGUMENT

I. TRADITIONAL STANDING

Defendants urge this Court to consider Senate Bill ("S.B.") 203, which goes into effect on May 7, 2025, "when rendering its decision on Plaintiffs' alleged standing." MTD at 5. Defendants argue that because the NhRP cannot meet the standards for traditional standing as required by S.B. 203, the Complaint must be dismissed. Their position is wrong for three reasons.

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[1] *See also* Matthew Liebman, *Animal Plaintiffs*, 108 MINN. L. REV. 1707, 1756 (2024) ("a legal person is a nonbiological concept that can refer to any entity to whom the law confers rights or from whom the law demands obligations"); F.H. Lawson, *The Creative Use of Legal Concepts*, 32 N.Y.U. L. REV. 909, 915 (1957) ("All that is necessary for the existence of a person is that the lawmaker, be he legislator, judge, or jurist, or even the public at large, should decide to treat it as a subject of rights or other legal relations."); IV ROSCOE POUND, JURISPRUDENCE 197 (1959) ("The significant fortune of legal personality is the capacity for rights.").

[2] *See, e.g., Smiler v. Napolitano*, 911 A.2d 1035, 1040 (R.I. 2006) ("There is a fundamental difference between a statute that categorically precludes all litigants from seeking redress for their injuries and one that lessens the common-law duty of care.").

First, S.B. 203 cannot be applied retroactively. The law was not in effect when the NhRP filed its Complaint on Jan. 29, 2025, and S.B. 203 does not explicitly state that it is retroactive. Dkt. 1. *See State v. Clark*, 2011 UT 23, ¶ 11 ("The courts of this state operate under a statutory bar against the retroactive application of newly codified laws."); *Rodriguez v. Crosby*, 2024 UT App 7, ¶ 12 (same); *see also* Utah Code Ann. § 68-3-3 ("A provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive."). *Clark* makes clear that regardless of whether laws pertain to substantive or procedural rights, "we apply the law as it exists at the time of the event regulated by the law in question." 2011 UT at ¶ 13; *State v. Rodriguez-Ramirez*, 2015 UT 16, ¶ 14 ("The point we made in *Clark* is that the line between substance and procedure is not ultimately an *exception* to the rule against retroactivity," but is "simply a tool for identifying the relevant 'event' being regulated by the law in question."). Under *Clark*, therefore, S.B. 203's traditional standing requirements cannot apply here because Utah law permitted alternative standing at the time the NhRP filed its Complaint.

Second, S.B. 203 "addresses the requirements for bringing a private right of action," Ex. 1, p. 1, but this lawsuit is not a private right of action because the NhRP is not seeking relief from injuries caused by another individual's violation of a statute. *See Hayden v. Burt & Payne PC*, 2021 UT App 102, ¶ 8 ("'A private statutory right of action exists when a private party can bring a lawsuit for relief from injuries caused by another's violation of a … statute.'") (citation omitted). This case is a constitutional challenge most like *Gregory v. Shurtleff*, 2013 UT 18, ¶ 3, where "a group of current and former legislators, other elected and unelected government officials, and self-described 'good citizens'" sued Utah's Attorney General, Treasurer, and Executive Director of the Department of Humans Resources. That group sought "a declaration that the Bill was

unconstitutional and an injunction against its implementation." *Id.* The suit in *Gregory*, like this one, was a constitutional challenge and not a private right of action.

Third, Defendants misapply *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc*., 528 U.S. 167 (2000) for the assertion that "the requisite standing that 'must exist at the commencement of the litigation [] must [also] continue throughout its existence.'" MTD at 6 (quoting *Friends of the Earth*, 528 U.S. at 170). As an initial matter, Defendants' citation of *Friends of the Earth* is to the Supreme Court's syllabus, not the opinion. *Compare id.* at 170 (Syllabus), *with id.* at 189 (Opinion). Furthermore, that citation refers to the standard for the doctrine of mootness (notwithstanding the doctrine's exceptions). *Id*. at 189 ("The confusion is understandable, given this Court's repeated statements that the doctrine of mootness can be described as 'the doctrine of standing set in a time frame.'") (citation omitted).[3]

II. ALTERNATIVE STANDING

A party can establish alternative standing "by showing that it is an appropriate party raising issues of significant public importance." *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 35. In arguing against the NhRP's alternative standing, Defendants erroneously assert the following: "*First*, there are more identifiable parties possessing a greater interest. *Second*, Plaintiffs' claims could be raised by other parties if Plaintiffs are denied standing. And, *third*, these issues are not of sufficient public importance." MTD at 7.

[3] Defendants also argue that "Utah's 'standing[] requirements mimic those imposed by the United States Supreme Court's interpretation of the federal constitution.'" MTD at 6 (quoting *Planned Parenthood Ass'n of Utah v. State*, 2024 UT 28, ¶ 12 n.5). However, Defendants fail to mention that in *Planned Parenthood*, the Supreme Court of Utah conceded that "federal cases may not have much to tell us about standing under the Utah Constitution because the Utah Constitution omits Article III's case or controversy requirement." 2024 UT at ¶ 12 n.5. Not to mention, *Planned Parenthood* was discussing a "traditional standing test," which is not at issue here. *Id.* at ¶ 12.

First, Defendants do not dispute (and thus effectively concede) that the NhRP is an appropriate party to bring this case. *See generally* Compl. ¶ 24. What they do dispute is that the NhRP is "the *most* appropriate party to assert these claims," which is irrelevant. MTD at 10 (emphasis added). Defendants apply an outdated notion under *Jenkins v. Swan*, 675 P.2d 1145 (1983) (vis-á-vis *Gregory*, 2013 UT 18), that standing is proper "only when no one 'has a greater interest in the outcome of the case than the plaintiff,'" and they claim there are "better-suited plaintiffs with a more direct interest in these issues." MTD at 8 (quoting *Gregory*, 2013 UT at ¶ 13). However, as the NhRP explained in its Complaint, *Sierra Club* clearly overruled *Jenkins* on the "most appropriate party" requirement, and *Gregory* reaffirmed the precedent:

> We recognize that there is language in both *Jenkins* and subsequent cases suggesting that in making this determination the court may grant standing only to the party with the greatest interest in the case, or in other words, the *most* appropriate party. . . . We now conclude, however, that the notion that the court must find the *most* appropriate party, thereby limiting standing under the alternative criteria to only one party in any given case, is unnecessary and counter-productive.

Sierra Club, 2006 UT at ¶ 36; Compl. ¶ 28 (same); *see also Gregory*, 2013 UT at ¶ 18 ("We reaffirm today the teaching of our precedent that 'Utah law … allows parties to gain standing if they can show that they are *an* appropriate party raising issues of significant importance.'") (citation omitted) (emphasis added).

Second, Defendants argue "Plaintiffs cannot show that the issues raised are unlikely to be raised or decided if Plaintiffs are denied standing." MTD at 9. Importantly, this argument is limited to the NhRP's third cause of action (violation of the Open Courts Clause under Art. 1, § 11 of the Utah Constitution), and thus it does not apply to the Complaint's other causes of action. Regardless, their assertion is wrong per *Sierra Club* because the issues raised in the NhRP's Complaint are unlikely to be raised if the NhRP is denied standing. The NhRP is uniquely situated to litigate the issues arising from H.B. 249 due to its experience in the legal personhood litigation

forum, which allows the organization to advance arguments from a different perspective even if they overlap with another party's arguments. *See, e.g.,* Compl. ¶¶ 16, 36, 38; *Sierra Club*, 2006 UT at ¶ 43 ("Indeed, the Sierra Club may be better equipped to effectively assist the court with the relevant legal and factual issues because it has . . . more experience in the environmental litigation forum."); *id.* ("Even where the Sierra Club's arguments overlap with those of the Citizens' Group, the Sierra Club presents the arguments from a different perspective."). Therefore, like Sierra Club who ensured relevant "state and federal environmental laws" were understood and applied correctly, the NhRP will ensure that the relevant (and often misunderstood) concept of legal personhood is understood and applied correctly.[4] *Id.* at ¶ 42.

Third, Defendants argue the NhRP cannot satisfy the public importance requirement of the alternative standing test because "[t]here is no public clamor for endowing animals with human rights, no appetite for these types of suits, and no public outcry against HB 249." MTD at 11. Defendants misunderstand the public importance in this case. To be clear, this case is a constitutional challenge and is not a request to endow nonhuman animals with legal rights. Under *Gregory*, alternative standing is available for matters "of great constitutional or public importance." 2013 UT at ¶ 11. The claims in this case rise to the level of great constitutional importance. *See* Compl. ¶ 44 (The NhRP's claims "go to the structural heart of Utah's three distinct branches of government."); *id.* at ¶ 46 ("Accordingly, the alleged constitutional violations in this Complaint are undoubtedly of sufficient weight (i.e., public importance) in and of themselves to

[4] Defendants' misunderstanding of personhood is evident in their discussion of the Open Courts Clause, where they assume nonhuman rightsholders are not legal "persons." MTD at 17-20. If an entity possesses a right, then it is a legal "person" whether it is human or not. Being a legal "person," however, does not mean having all the same rights as a human. Legal "persons" can (and do) include nonhuman animals, like domestic nonhuman animals who have rights as pet trust beneficiaries. *See* Compl. ¶¶ 6, 81-84

warrant granting the NhRP alternative standing. To rule otherwise and allow H.B. 249 to go unchallenged would mean a categorical rejection of the . . . Utah Constitution.").

The claims here also rise to the level of great public importance because preserving the opportunity to confer legal personhood to nonhuman entities has elicited great public debate. Representative Walt Brooks (the bill's sponsor) confirmed this when he made the following statement at the Senate committee hearing on H.B. 249: "[Nonhuman legal personhood] is really quite a big issue. . . . It's happening all over the country and it's something that we need to identify and clarify in our code."[5] Contrary to Defendants' assertion that there is "no public outcry against H.B. 249," many Utahans have gone on record opposing it.[6] MTD at 11. Notably, "[a]ll public comments during the [House Committee] hearing spoke in opposition" of the legislation.[7] Competing opinions—along with the fact that H.B. 249 was introduced because of the NhRP's

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[5] Jeff Richards, *Utah House bill aims to exclude nonhuman entities from being granted legal 'personhood,'* ST. GEORGE NEWS (Feb. 14, 2024), available at: https://bit.ly/3QWmGkN; *see also Utah Legal Personhood Amendments: Hearing on H.B. 249*, 65th Leg., 2024 Sess. (UT 2024) (statement of Rep. Walt Brooks, Member, Utah House of Representatives) available at: https://bit.ly/4i2Mk2m ("We do have instances in the United States [] where it is happening. For example, there is a beloved elephant in New York City [and] people feel bad it is stuck in a cage; so, they are trying to get it personhood status.").

[6] *See* McKenzie Romero, *Denying Great Salt Lake 'personhood' closes an option for saving the lake, Utahns say*, UTAH NEWS DISPATCH (Jan. 23, 2024), available at: https://bit.ly/3QZL1Gg; Hufford and Jarvis, *Hufford & Jarvis: Restricting Environmental Personhood is Irresponsible*, THE DAILY UTAH CHRONICLE (April 12, 2024), available at: https://bit.ly/3QZLrMQ; Cowan and Copinga, *Does the Great Salt Lake have rights?*, BULLDOG PRESS (March 13, 2024), available at: https://bit.ly/4cd5l0u; *see also* Katie Surma, *Environment, Utah Supports "Personhood" for Corporations, but Maybe Not Forests,* MOTHER JONES (Feb. 5, 2024), available at: https://bit.ly/4cd6GV4 (H.B. 249 "comes amid growing efforts to obtain legal recognition that the lake possesses inherent rights to exist and to maintain water levels sufficient for ecosystem health."); Will Falk, *The Great Salt Lake is Disappearing… So Utah Bans Rights of Nature.*, COUNTERPUNCH (April 21, 2024), available at: https://bit.ly/4iVZhw8 ("The law is a reaction to a growing rights of nature movement in Utah seeking to secure legal personhood for the Great Salt Lake.").

[7] Duck Thurgood, *Wednesday AM headlines: Can the environment have legal personhood? This bill says no*, UTAH PUBLIC RADIO (Jan. 24, 2024), available at: https://bit.ly/3FSRDny.

litigation efforts in New York, and the "rights of nature" movement generally—demonstrate that nonhuman legal personhood is quite a big issue of public importance. Compl. ¶¶ 37, 74 n.7.

III. FACIAL CONSTITUTIONAL CHALLENGE

Defendants urge this Court to dismiss the Complaint because "[t]here are many circumstances under which H.B. 249 would be constitutional," and a facial challenge requires establishing that "'no set of circumstances exist under which the [statute] would be valid.'" MTD at 14 (quoting *State v. Herrera*, 1999 UT 64, ¶ 4, n.2). However, the examples provided by the Defendants (i.e., "prohibit 'granting legal personhood' on a nonhuman animal for purposes of the right to contract," the "right to vote," and the right to "enter into a marriage") are not circumstances under which H.B. 249 would be constitutional. *Id.* The question here is not whether it would be constitutional to prohibit individual examples of legal personhood recognition. H.B. 249 universally prohibits any recognition of legal personhood for all the nonhuman entities listed in the statute. Therefore, under the "no set of circumstances" standard, the relevant question is whether there are circumstances under which H.B. 249 can (consistent with the Utah Constitution) forever prohibit any recognition of legal personhood for all the covered nonhuman entities.

Furthermore, this Court has the discretion to reject the "no set of circumstances standard" in deciding whether H.B. 249 is facially unconstitutional. This standard came to Utah through *United States v. Salerno*, 481 U.S. 739, 745 (1987). In *Utah Pub. Emps. Ass'n v. State*, 2006 UT 9, ¶ 22, the Supreme Court of Utah explained that the *Salerno* standard is not the correct standard for all facial challenges: "The [United States Supreme] Court also suggested, by referencing scholarly articles on the matter, that in state law cases in state courts, a more appropriate threshold for determining the validity of facial challenges may simply exist in establishing the substantive merits of the case–the unconstitutionality of the legislation." *See also id.* at ¶ 23 ("More importantly in

this situation, we have rejected the *Salerno* standard in some instances and have discredited its universal application."). In other words, "an essential principle of federalism is that states have the authority to create their own constitutional law when reviewing claims brought under their own state constitution," and thus are "not required to follow *Salerno's* 'restrictive' test for facial challenges." *Id.* at ¶ 25.

Ultimately, the Supreme Court of Utah declined to apply *Salerno* in the takings context, stating:

> In *Smith Investment Company v. Sandy City*, for example, our court of appeals turned to the substantive law in determining whether a facial challenge was proper. In other words, the court looked specifically to the constitutionality of the legislation affecting the challenger's property. The court held that if plaintiffs do not allege "any injury due to the enforcement of the statute, there is as yet no concrete controversy regarding the application of the specific provisions and regulations. "Thus, *the only question before this court is whether the mere enactment of the statutes and regulations constitutes a taking*."

Id. at ¶ 24. This Court should apply a similar analysis and simply ask whether the mere enactment of H.B. 249 violates the Separation of Powers Clause, the Franchises Forbidden Clause, the Open Courts Clause, or the Judicial Function Clause under the Utah Constitution. If the answer is "yes," then H.B. 249 is facially unconstitutional.

IV. POLITICAL QUESTION DOCTRINE

Defendants assert that the NhRP's constitutional claims violate the "Separation of Powers under the political question doctrine," MTD at 20, because "there is a clear lack of judicially discoverable and manageable standards for resolving the issue of nonhuman animal rights." *Id.* at 21. Defendants also assert, "it would be impossible for this Court to strike down H.B. 249 for unconstitutionally excluding nonhuman animals from a 'legal personhood' definition without some kind of . . . policy determination." *Id.* at 21. However, Defendants' arguments rest on the false premise that to find H.B. 249 unconstitutional this Court must decide whether to grant

nonhuman animals legal rights, thereby making them legal "persons." The Court does not need to make such a decision. Nor does this Court need to make any policy determinations. This case is about "the fundamental structure of legislative power articulated in the Utah Constitution," not about conferring legal personhood onto nonhuman animals. Compl. ¶ 42.

In support of their assertion, Defendants surprisingly rely on *Matter of Childers-Gray*, 2021 UT 13, ¶ 63, in which the Supreme Court of Utah rejected the argument that the political question doctrine was violated. At issue was the question of whether "district courts have the jurisdiction and authority to adjudicate sex-change petitions." *Id.* at ¶ 60. To answer that question, the Supreme Court of Utah asked (1) "whether adjudicating sex-change petitions is a nonjusticiable political question," and (2) "whether adjudicating sex-change petitions is unconstitutional under the 'Separation of Powers' clause of the Utah Constitution." *Id.* at ¶ 61. Ultimately, the "answer to both queries [wa]s a resounding no," because "[i]n adjudicating sex-change petitions . . . district courts exercise one of the basic tenets of their judicial role: their common-law authority." *Id.* at ¶ 66.

Here, the relevant questions are (1) whether adjudicating the constitutionality of H.B. 249 is a nonjusticiable political question, and (2) whether adjudicating the constitutionality of H.B. 249 is unconstitutional under the Separation of Powers Clause of the Utah Constitution. Ultimately, the answer to both queries is similarly a resounding "no." In reviewing "'the constitutionality of a statute for correctness,'" which is a judicially manageable standard, courts exercise one of the basic tenets of their judicial role: judicial review. *Id.* at ¶ 14 (citation omitted). *See also Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995) ("If a claim involves the interpretation of a statute or questions the constitutionality of a particular political policy, courts are acting within

their authority in scrutinizing such claims so long as there are judicially discoverable and manageable standards for resolving the dispute.") (cleaned up).[8]

V. FIRST, SECOND, AND FOURTH CAUSES OF ACTION

Defendants cite a single case in their attempt to seek dismissal of the NhRP's claims under the Utah Constitution at Art. 5, § 1 (Separation of Powers), Art. 1, § 23 (Franchises Forbidden), and Art. 8, § 1 (Judicial Function). They quote *Utah Stream Access Coal. v. VR Acquisitions, LLC,* 2019 UT 7, ¶ 4, for the assertion that "a Utah 'court's common-law decisions are subject to adaption or reversal by the legislature.'" MTD at 16. Defendants leave unaddressed the NhRP's citations to *Salt Lake City v. Ohms*, 881 P.2d 844 (1994); *W. Jordan City v. Goodman*, 2006 UT 27; *Thomas v. Daughters of Utah Pioneers*, 114 Utah 108 (1948); *Vega v. Jordan Valley Med. Ctr., LP,* 449 P.3d 31 (2019); and *Holm v. Smilowitz*, 840 P.2d 157 (Utah Ct. App. 1992), among others. Compl. ¶¶ 60, 62, 70, 90, 98.[9]

A. Separation of Powers

The Separation of Powers Clause in the Utah Constitution is not a singular clause but two distinct clauses separated by a semicolon. Art. 5, § 1 states:

> [1] The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; [2] and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

[8] *See also Gregory*, 2013 UT at ¶ 31 ("Here, Appellants' claims do not raise [a nonjusticiable political] question. Rather, they seek to enforce an explicit and mandatory constitutional provision dealing primarily with questions of form and process.").

[9] *See Rose v. Off. of Pro. Conduct*, 2017 UT 50, ¶ 65 ("But at the very least, an argument should clearly identify the contention, cite supporting authority, [and] distinguish contrary authority.").

The first clause is "offended when there is an attempt by one branch to dominate another in that other's proper sphere of action," and "disallows one branch from effectively controlling another even when the power in question is shared." *In re Young*, 1999 UT 6, ¶ 23. The second clause is offended as determined by "a relatively straightforward three-step inquiry." *Id.* at ¶ 8. Violating either clause is unconstitutional. As alleged in the Complaint, H.B. 249 violates both clauses. *See* Compl. ¶ 59 (first clause), *id.* at ¶¶ 62-65 (second clause's three-step inquiry).

Regarding the first clause, the relevant inquiry is whether H.B. 249 is an "attempt by one branch to dominate another in the other's proper sphere of action." *In re Young*, 1999 UT at ¶ 23. That is the case here. H.B. 249 is an attempt by the 2024 Utah Legislature to dominate the Utah judiciary's proper sphere of action by completely stripping the latter's common law authority in the area of legal personhood. *See Matter of Childers-Gray*, 2021 UT at ¶ 66 ("The common law is 'a subject lodged firmly within the court's sphere.'") (citation omitted).

Defendants cite *Utah Stream* for the proposition that "'the legislature is empowered to recalibrate and even reverse [a court's] common-law decisions.'" MTD at 16 (citation omitted). While the NhRP does not dispute the Utah Legislature's broad authority to adapt, recalibrate or reverse common law decisions, this authority does not support dismissal of the Separation of Powers claim. Significantly, *Utah Stream* does not stand for the proposition that the Utah Legislature has the unconditional ability to eliminate the judiciary's common law power. Limitations exist. For example (and as discussed *infra* § VI), the Utah Legislature cannot "abrogate legal remedies recognized at common law" without implementing "'an effective and reasonable alternative remedy.'" *Waite v. Utah Lab. Comm'n*, 2017 UT 86, ¶ 43 (citation omitted); *see also Laney v. Fairview City*, 2002 UT 79, ¶ 48, *holding modified by Moss v. Pete Suazo Utah Athletic Comm'n*, 2007 UT 99, ¶ 48 (Under the Open Courts Clause, the "legislature would not be free to

arbitrarily eliminate common law rights without establishing significant social and policy need or providing reasonable alternatives for the protection and vindication of those rights."). Taking this limitation to its natural conclusion, the Utah Legislature cannot completely "'dominate'" the judiciary's "'proper sphere of action'" in the area of the common law. Compl. ¶ 59 (citation omitted); *see also State v. Rettig*, 2017 UT 83, ¶ 102 (Durham, J., concurring) ("As each case comes before us, we have the opportunity to refine the common law as justice so requires."); *Jones v. Barlow*, 2007 UT 20, ¶ 61 (Durham, C.J., dissenting) ("The common law is able to adapt and grow because the common law system endows courts with 'judicial inventiveness to meet new situations.'") (citation omitted).

Through their common law authority and in an appropriate case, courts can recognize the legal personhood of a nonhuman entity as part of their power to create and alter causes of action. *See Matter of Childers-Gray*, 2021 UT at ¶ 66 ("'It is the responsibility of the judiciary to examine those causes of action which it has created, to alter them when appropriate, and to abolish them when necessary. The basic evolutionary provisions of the common law have not been repealed.'") (citation omitted).[10] Accordingly, if a court recognizes that a nonhuman entity has an enforceable right under the common law then that entity would definitionally become a legal "person," subject to the protections of the Open Courts Clause. In other words, that entity would be a legal "person" entitled to "have a remedy by due course of law," for injuries "done to the person in his or her person, property, or reputation." Utah Const. Art. 1, § 11. Therefore, the Utah Legislature cannot

[10] *See also Anne Arundel Cnty. v. Reeves*, 474 Md. 46, 87 (2021) (Hotten, J., dissenting) ("[E]xtending legal personhood to pets on a limited basis to recover for emotional damages for the pet's grossly negligent injury or death could present an incremental change to Maryland tort law," and would serve to "dignify the deep emotional connection between humans and their pets and underscores a widely shared belief in modern society that animals are not chattel, but members of the family.").

have the authority to preclude all nonhuman entities from being granted any common law rights in the first place; otherwise, the Utah Legislature would completely dominate the judiciary contrary to the first clause of Art. 5, § 1.

B. Franchises Forbidden; Power vested in Senate, House, and People

The NhRP alleges that H.B. 249 violates Art. 1, § 23 of the Utah Constitution because it "mandates that legal personhood is off the proverbial table for all time," no matter the unexpectedness of tomorrow. Compl. ¶ 74; *see also Utah Mfrs.' Ass'n v. Stewart*, 82 Utah 198, 232 (1933) ("What is prohibited by article 1, § 23, is . . . the granting irrevocably of any franchise, privilege, or immunity."). To this Defendants argue, "H.B. 249 does not preclude future Utah legislatures from further action [because] H.B. 249 is not 'set in stone' with no prospects of subsequent alteration." MTD at 16. Yet, this is precisely how H.B. 249 is written, as legislation that is fixed, permanent, and cannot be changed: "Notwithstanding any other provision of law, [the Utah Legislature] may not grant legal personhood to, nor recognize legal personhood in," the nonhuman entities enumerated in the statute. Compl., Ex. A. *See Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 9 ("'It is axiomatic that the best evidence of the legislative intent is the plain language of the statute itself.'"). *See also Riggins v. Dist. Ct. of Salt Lake Cnty.*, 51 P.2d 645, 658 (Utah 1935) ("'the State cannot barter away, or in any manner abridge or weaken, any of those essential powers which are inherent in all governments'") (citation omitted).

As the former Chief Justice of the Utah Supreme Court recognized in *Thomas*, the Utah Constitution is violated when the legislature is "preclude[d]" from inquiries related to previous legislative actions. 114 Utah at 149 (McDonough, C.J., concurring); *see also* Compl. ¶¶ 70-72 (discussing *Thomas*). If being precluded from making inquiries related to previous legislative actions is unconstitutional, surely being precluded from making laws because of previous

legislation is unconstitutional, too. *Riggins,* 51 P.2d at 658 ("'Equally incumbent upon the State legislature and these municipal bodies is the restriction that they shall adopt no irrepealable legislation. No legislative body can so part with its powers by any proceeding as not to be able to continue the exercise of them. It can and should exercise them again and again, as often as the public interests require.'") (citation omitted).

Additionally, H.B. 249 violates Art. 6, § 1 of the Utah Constitution, which vests the "Legislative power of the State" in "a Senate and House of Representatives," because it impermissibly restricts the Utah Legislature's lawmaking authority. Utah Const. art. VI, § 1(1)(a). As the Supreme Court of Utah recently affirmed, "the Utah Constitution designates to the legislature the power to enact substantive laws," meaning "laws that create, destroy, or alter the rights and duties of parties and which may give rise to a cause of action." *State v. Rippey,* 2024 UT 45, ¶ 23 (cleaned up); *see also Mitchell v. Roberts*, 2020 UT 34, ¶ 31 ("the legislature has the power to enact general laws to govern behavior going forward"); *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶ 97 ("legislative power generally includes the power to amend and repeal existing statutes"). Accordingly, the Utah Legislature unquestionably has the power to grant legal personhood to nonhuman entities, and this power is unconstitutionally eliminated by H.B. 249.

C. Judicial Function

In *Vega*, 449 P.3d at 36, the Supreme Court of Utah recognized that "the core judicial power vested in the courts by Article VIII is always retained by the judiciary—regardless of whether the party attempting to exercise a core judicial function belongs to another branch of government."[11]

[11] Core judicial powers include "the authority to hear and determine justiciable controversies as well as the authority to enforce any valid judgment, decree or order." *Ohms*, 881 P.2d at 849 (cleaned up).

See also Compl. ¶¶ 88-95 (analyzing *Vega*). In other words, under Article 8 of the Utah Constitution, "[c]ore functions or powers of the various branches of government are clearly nondelegable." *Ohms*, 881 P.2d at 848. This means, "[a]ny attempt by either the legislature or the judicial council to [delegate] the power of such judges to others would plainly circumvent and violate the Utah Constitution." *Id.* at 850.

H.B. 249 seeks to circumvent the Utah Constitution by preventing known and unknown causes of action for nonhuman entities from ever being brought. If Defendants have their way, the Utah Legislature will "exercise ultimate judicial power," effectively eliminating the common law's celebrated novel and evolutionary nature in favor of uniquely statutory oversight. *Holm v. Smilowitz*, 840 P.2d 157, 166 (Utah Ct. App. 1992). This would be tragic because "the law evolves according to its own methodology," and "there remains the unifying commitment to demonstrating that not only can the common law balance the competing demands of stability and change, but that it can do so in a legitimate way that respects the important distinction between law and politics." ALLAN C. HUTCHINSON, EVOLUTION AND THE COMMON LAW 10 (Cambridge U. Press, 2005).

VI. THIRD CAUSE OF ACTION

Defendants do not dispute that H.B. 249 eliminates all causes of action for the enforcement of Utah Code Ann. § 75-2-1001 ("pet trust statute"). Nevertheless, they urge dismissal of the NhRP's third cause of action, violation of the Open Courts Clause under Art. 1, § 11 of the Utah Constitution because "the Open Courts Clause exists to guarantee *people* access to courts, not nonhuman animals." MTD at 17. In making this argument, Defendants rely on *Velarde v. Board of Review of Indus. Comm'n*, 831 P.2d 123 (Utah Ct. App. 1992), claiming that "*Velarde* mentioned the only entity for which the Open Courts Clause applies [is] a *person*." MTD at 18. The NhRP does not disagree that the protections of the Open Courts Clause apply only to

"persons." Rather, the NhRP disagrees that those protections exclude nonhuman rightsholders, who are necessarily "persons."

A legal "person" is not synonymous with being human but is simply the consequence of being a rightsholder (or a duty-holder), and who is a rightsholder (and thus a "person") has evolved over time. Even the Supreme Court of Utah of thirty years ago understood the evolutionary nature of legal personhood in the context of the Open Courts Clause: "The meanings of the term 'person,' 'property,' and 'reputation' have indeed evolved, especially since the end of the nineteenth century." *DeBry v. Noble*, 889 P.2d 428, 436 (Utah 1995). The Clause was written in "broad, flexible language," such that the fundamental interests of "person," "property," and "reputation" protected by the Clause "were to be protected as societal and jurisprudential concepts of those terms evolved." *Id.* at 435; *see also id.* ("For the law to freeze the meaning of [the Open Courts Clause and the Due Process Clause] as of one point in time would be to deny the essential meaning and purpose that was built into those clauses by the broad, expansive language that the Constitution uses."). Critically, nowhere in the Complaint did the NhRP allege that a rightless nonhuman animal was entitled access to Utah's courts via the Open Courts Clause.

Since "persons are the subjects of rights or duties, if animals have legal rights, then they are legal persons."[12] Matthew Liebman, *Animal Plaintiffs*, 108 MINN. L. REV. 1707, 1756 (2024). In accord with this understanding of legal personhood and the commentary in *Noble*, some domestic nonhuman animals in Utah are legal "persons" because they have a single statutory right to a trust corpus, which has been created on their behalf pursuant to the pet trust statute. "Accordingly, under the pet trust statute, nonhuman animal beneficiaries have a cause of action if the wills created on

[12] Theoretically, there is even "no difficulty giving legal rights to a supernatural being and thus making him or her a legal person." JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 39 (2d ed. 1963).

their behalf are not properly enforced." Compl. ¶ 84. By enacting H.B. 249, the Utah Legislature has eliminated all causes of action for the enforcement of the pet trust statute without a quid pro quo substitute remedy, and absent a perceived societal or economic evil. *See Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.*, 782 P.2d 188, 191 (1989) ("If the legislature abrogates one remedy, it must create another."); *id.* ("when the legislature removes a particular right or remedy, it cannot simply rely on other preexisting rights or remedies to fill the void left behind, but must rather provide a quid pro quo in the form of either a substitute remedy for the individual or the removal of a perceived social or economic evil for society").

As H.B. 249 does not contemplate alternative remedies after effectively eliminating causes of action seeking to enforce Utah's pet trust statute, H.B. 249 unconstitutionally violates the Open Courts Clause. *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985) ("[I]f there is no substitute or alternative remedy provided, abrogation of the remedy or cause of action may be justified only if there is a clear social or economic evil to be eliminated and the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving the objective.").[13]

VII. CONCLUSION

The NhRP takes no position on the dismissal of Defendants Derek Brown and Spencer Cox from this matter. For the reasons set forth herein, the NhRP respectfully requests that this Court deny Defendants' MTD.

[13] Defendants can tout the criticism of *Berry*'s three-part test to determine whether legislation violates the Open Courts Clause, MTD at 18-19, but today that test remains the standard. As alleged, "H.B. 249 satisfies all three prongs of the *Berry* test thus violating Article [1], section 11 of the Utah Constitution." Compl. ¶ 80.

DATED: April 4, 2025, Salt Lake City, Utah

Respectfully submitted,

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Exhibit 1

Judicial Standing Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor: Casey Snider

LONG TITLE

General Description:

This bill addresses standing to bring a civil action.

Highlighted Provisions:

This bill:

- defines terms related to a civil action;
- provides legislative findings with regard to the traditional standing requirement;
- addresses the requirements for bringing a private right of action; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-3-101.1, Utah Code Annotated 1953

78B-3-101.3, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

78B-3-101.5, (Renumbered from 78B-3-101, as enacted by Laws of Utah 2008, Chapter 3)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-3-101.1** is enacted to read:

CHAPTER 3. CIVIL ACTIONS

Part 1. Right to Sue and Be Sued

78B-3-101.1 . Definitions for part.

As used in this part:

(1) "Defendant" means a person against which a civil action is brought.

(2) "Plaintiff" means a person that brings a civil action.

(3) "Third party" means a person other than the plaintiff.

(4) "Traditional standing requirement" means the requirement established by the Utah Supreme Court that a plaintiff bringing a private right of action can establish that the plaintiff has an injury in fact, causation, and redressability.

Section 2. Section **78B-3-101.3** is enacted to read:

78B-3-101.3 . Requirements for a private right of action -- Findings.

(1) The Legislature finds that:

(a) the traditional standing requirement in a private right of action is important to ensure that a plaintiff has a personal stake in the outcome of the action;

(b) the traditional standing requirement respects and safeguards the core constitutional principles of separation of powers by limiting a court's authority to hear only a private right of action where the plaintiff has a personal stake in the outcome of the action;

(c) the traditional standing requirement protects the legal rights and interests of the person with the right to bring the private right of action; and

(d) allowing a plaintiff that does not meet the traditional standing requirement for a claim that asserts the constitutional rights of a third party in a private right of action:

(i) infringes on the constitutional and statutory rights of the third party to bring a private right of action on the third party's own behalf;

(ii) conflicts with statutory and procedural laws that recognize that a real party in interest is the proper party for bringing a private right of action; and

(iii) circumvents class action laws that protect a third party from having claims litigated on the third party's behalf without the third party's knowledge or consent.

(2) For a plaintiff to bring a private right of action in a court of this state, the plaintiff shall meet the traditional standing requirement in a private right of action.

(3) If a plaintiff brings a private right of action in a court of this state with a claim asserting the constitutional rights of a third party, the plaintiff shall establish that:

(a) the third party meets the traditional standing requirement for bringing the action;

(b) the plaintiff has a substantial relationship with the third party;

(c) there is no way for the third party to bring a private right of action to assert the third

party's own constitutional rights; and

(d) the third party's constitutional rights would be weakened without the plaintiff bringing the action.

(4) If the plaintiff is an association bringing a private right of action on behalf of any member of the association, the plaintiff shall plead with particularity that:

(a) the member meets the traditional standing requirement for bringing a private right of action;

(b) the member consents to the association bringing the action on the behalf of the member; and

(c) the participation of the member is not necessary to the resolution of the action.

(5) Notwithstanding Subsection (1) or (2), a plaintiff may bring a private right of action in a court of this state if the plaintiff is authorized by statute to bring the private right of action.

(6) A court shall dismiss a private right of action if the plaintiff cannot demonstrate that the plaintiff meets the requirements of this section.

Section 3. Section **78B-3-101.5**, which is renumbered from Section 78B-3-101 is renumbered and amended to read:

~~[78B-3-101]~~ 78B-3-101.5 . Husband and wife -- Actions -- Defense -- Absent spouse.

(1) If a husband and wife are sued jointly, either or both may defend in each one's own right or for both parties.

(2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.

(3)(a) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended.

(b) All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Section 4. **Effective Date.**

This bill takes effect on May 7, 2025.