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This motion requires you to respond. Please see the Notice to Responding Party.

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOEL BAN and the 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.	**DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT THEREOF** Case No: 250900869 Honorable Robert Faust

Pursuant to Utah R. Civ. Pro 12(b)(1) and 12(b)(6), Defendants State of Utah ("Utah"), Attorney General Derek Brown (the "Attorney General") in his official capacity, and Governor Spencer Cox ("Gov. Cox" or the "Governor") in his official capacity (collectively "Defendants" or "State") respectfully move the Court to dismiss Plaintiff Joel Ban's and the Nonhuman Rights Project, Inc.'s ("Plaintiffs") Complaint.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

Defendants request that this Court dismiss Plaintiffs' Complaint. Plaintiffs lack standing to bring their claims. And Plaintiffs' claims run afoul of the political question doctrine.

Moreover, Plaintiffs are unable to establish the elements for their claims that H.B. 249 violates the Separation of Powers, Franchises Forbidden, Open Courts, and Judicial Functions Clauses of the Utah Constitution. Further, even if Plaintiffs' claims survive this Motion, Attorney General Brown and Governor Cox should be dismissed from this action because they cannot provide relief to Plaintiffs.

INTRODUCTION

Plaintiffs' pursuit of legal personhood for nonhuman animals does not get past the starting blocks. Plaintiffs lack standing to challenge the constitutionality of H.B. 249. But, even if they could establish standing, Plaintiffs cannot meet the high burden required for a facial constitutional challenge and improperly asks this Court to engage in policymaking well beyond its judicial function.

At its core, Plaintiffs' claims are based on the unprecedented and legally unsound assertion that nonhuman animals are entitled to legal personhood status with all its associated rights. However, to Defendants' knowledge, neither Utah law nor any court in the United States has ever recognized such a right. Plaintiffs' attempt to manufacture standing for a matter of so-called significant public importance ignores that the public's significant interest resides on the side of the line opposing Plaintiffs' requested relief and the legal confusion granting such would create.

Regardless, Plaintiffs' legal challenge lacks merit. H.B. 249 merely codifies a long-standing principle of law that legal personhood is a status reserved for humans and entities explicitly recognized by both the legislature and common law. H.B. 249 does not strip away existing rights. H.B. 249 does not prevent the judiciary from fulfilling its constitutional role. And Plaintiffs' allegations to the contrary overlook the well-settled authority of the legislature in defining legal rights and obligations.

Even if this Court entertains Plaintiffs' claims, neither Governor Cox or Attorney General Brown are proper parties to this suit. H.B. 249 lacks an enforcement mechanism requiring action by these officials. In short, these Defendants cannot provide the relief Plaintiffs' request. For these reasons, as discussed in further detail below, Defendants respectfully ask this Court to dismiss Plaintiffs' Complaint in its entirety, with prejudice.

BACKGROUND

Procedural History

1. On March 21, 2024, Utah House Bill 249 (codified as UTAH CODE § 63G-31-101) ("H.B. 249") was signed into law and took effect on May 1, 2024.
2. H.B. 249 states that "[n]otwithstanding any other provision of law, a governmental entity may not grant legal personhood to, nor recognize legal personhood in" a defined list of items and entities, including "a nonhuman animal." UTAH CODE § 63G-31-102.
3. H.B. 249 defines "legal personhood" as "the legal rights and obligations of an individual under [Utah law]" or "the legal rights and obligations of a person other than an individual under [Utah law]." UTAH CODE § 63G-31-101(5).
4. On January 29, 2025, Plaintiffs filed their Complaint for Declaratory Relief ("Complaint") relating to H.B. 249.
5. Plaintiffs' Complaint alleges:
    a. "H.B. 249 is vague and unconstitutional on its face" because it prohibits governmental entities from conferring legal personhood "onto an enumerated list of nonhuman entities." (Complaint at ¶ 2.)
    b. H.B. 249 prohibits the Utah judiciary and all Utah legislative assemblies (now and in the future) from granting any legal right to, or recognizing any legal right in, any entity that is not a member of the species *Homo sapiens*." (*Id.* at ¶ 3.)

c. "H.B 249 eliminates the possibility of any court even considering the recognition of legal personhood in any entity that is not a human." (*Id.* at ¶ 11.)

d. H.B. 249 constitutes a "legislative attempt to mandate legal conclusions, which violates the Constitution and is antithetical to how the common law evolves." (*Id.*)

e. "Consequently, H.B. 249 violates the Utah Constitution, specifically Art. V, § 1 (Separation of Powers), Art. I, § 23 (Franchises Forbidden), Art. I, § 11 (Open Courts Clause), and Art. VIII, § 1 (Judicial Function)." (*Id.* at ¶ 4.)

6. Plaintiffs' Complaint seeks a declaration that H.B. 249 facially violates the Utah Constitution. (*See id.* at ¶ 13.)

7. Plaintiffs further allege that they possesses alternative standing (*i.e.* "public interest standing") to bring their claims because: "(1) it is an appropriate party to raise the issues in the immediate dispute . . . (2) the issues it seeks to raise are of sufficient public importance; and (3) the issues are not more appropriately addressed by another branch of government through the political process." (*Id.* at ¶¶ 24-48.)

LEGAL STANDARDS OF REVIEW

Rule 12(b)(1) of the Utah Rules of Civil Procedure allows a party to raise subject matter jurisdiction as a defense to a complaint. Indeed, the Court must assure itself of jurisdiction before deciding any substantive issues. "[T]o entertain a dispute, a court must have jurisdiction over both the subject matter of the dispute and the individuals involved." *Curtis v. Curtis*, 789 P.2d 717, 726 (Utah Ct. App. 1990). The Supreme Court has "repeatedly recognized that a justiciable controversy is the keystone of our judicial framework." *Carlton v. Brown*, 2014 UT 6, ¶ 29, 323 P.3d 571, 579-80 (internal citations and quotation marks omitted). "Indeed . . . the judicial power of courts is generally understood to be the power to hear and determine controversies between adverse parties[.]" *Id*.

In deciding the propriety of a rule 12(b)(6) motion, trial courts are obliged to address the legal viability of a plaintiff's underlying claim as presented in the pleadings. *Williams v. Bench*, 2008 UT App 306, ¶ 20, 193 P.3d 640, 647. Dismissal is proper when a plaintiff cannot recover under the facts alleged in the complaint. *Bennett v. Jones, Waldo, Holdbrook & McDonough*, 2003 UT 9, ¶ 30, 70 P.3d 17. "Mere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude dismissal." *Miller v. W. Valley City*, 2017 UT App 65, ¶ 12, 397 P.3d 761, 766 (citation omitted). And "the court need not accept legal conclusions or opinion couched as facts." *Id.* (citation omitted). Dismissal is justified when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim. *Capri Sunshine, LLC v. E & C Fox Invs., LLC*, 2015 UT App 231, ¶ 11, 366 P.3d 1214, 1217 (citation omitted).

ARGUMENT

I. PLAINTIFFS LACK STANDING TO BRING THEIR CLAIMS

Knowing they cannot satisfy the elements for traditional standing, Plaintiffs allege they possess alternative standing to bring this case. (*See* Complaint at ¶¶ 24-48.)[1] Plaintiffs are not correct and their claims must be dismissed for lack of standing.

As an initial matter, the alternative standing asserted by Plaintiffs will be precluded under Utah law as of May 7, 2025. The Utah Legislature recently passed S.B. 203, which eliminates public interest standing. (*See* S.B. 203 attached hereto at Exhibit 1.) Although this law will not go into effect until May, this Court should consider the impending change to Utah law when rendering its decision on Plaintiffs' alleged standing because standing is a requirement that must exist throughout the case. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528

[1] Notably, Plaintiffs never attempt to allege they satisfy the standard for traditional standing. (*See* Complaint at ¶ 26.)

U.S. 167, 170, 120 S. Ct. 693, 698, 145 L. Ed. 2d 610 (2000) (stating that the requisite standing that "must exist at the commencement of the litigation [] must [also] continue throughout its existence"); *see also Planned Parenthood Ass'n of Utah v. State*, 2024 UT 28, ¶ 47 n.5, 554 P.3d 998 (stating that Utah's "standing' requirements mimic those imposed by the United States Supreme Court's interpretation of the federal constitution").

Specifically, under S.B. 203, "the Legislature finds" that allowing plaintiffs without traditional standing to assert constitutional rights on behalf of third parties "infringes on the constitutional and statutory rights of the third party," and "conflicts with statutory and procedural laws that recognize" real parties in interest as proper parties for private rights of action, among other things. *See* Exhibit 1 (UTAH CODE § 78B-3-101.3(1)(d)). Thus, plaintiffs "shall meet the *traditional* standing requirement in a private right of action." *Id.* (UTAH CODE § 78B-3-101.3(2)) (emphasis added). Further, any plaintiff "asserting the constitutional rights of a third party" must establish that "the third party meets the traditional standing requirement. . . ." *Id.* (UTAH CODE § 78B-3-101.3(3)(a)). Accordingly, because Plaintiffs do not allege and cannot meet the standards for traditional standing, Plaintiffs lack standing under S.B. 203 and Plaintiffs' Complaint must be dismissed.

Regardless, Plaintiffs do not meet the elements for alternative standing even if such had not been eliminated by S.B. 203. Standing constitutes a jurisdictional requirement of Utah law. *See Brown v. Div. of Water Rights of the Dep't of Natural Res.*, 2010 UT 14, ¶ 12, 228 P.3d 747. Utah courts engage in a "two-step process" to determine whether a party has standing to assert a claim. *State in the interest of C.B. v. State*, 2013 UT App 7, ¶ 23, 294 P.3d 670. *First*, the court considers whether a "party has standing under the traditional standing test," which primarily requires a "distinct and palpable injury" and a "personal stake in the outcome of the

controversy." *Id.* at ¶¶ 23-24. In other words, for traditional standing "one must be personally adversely affected before he has standing to prosecute an action. . . ." *Jenkins v. State,* 585 P.2d 442, 443 (Utah 1978).

Second, if a party does not meet the standard for traditional standing, courts were previously empowered to "grant standing where matters of great public interest and societal impact are concerned." *Id.* In short, if a party lacked a particularized injury, the court could, prior to S.B. 203, consider the alternative "public interest" standing. The test for public interest standing was satisfied if: (1) plaintiff is the appropriate party to litigate the claims at issue; and (2) the claims at issue are of significant public importance "in and of themselves to warrant granting the party standing." *State*, 2013 UT App 7 at ¶¶ 23-24; *see also Gregory v. Shurtleff*, 2013 UT 18, ¶ 15, 299 P.3d 1098. Importantly, though, courts cannot "readily relieve a plaintiff of the salutory requirement of showing a *real and personal interest* in the dispute." *Jenkins v. Swan,* 675 P.2d at 1150 (internal quotation marks omitted) (emphasis added).

In determining whether alternative standing exists, courts first ask "*whether there is anyone who has a greater interest* in the outcome of the case than the plaintiff." *Id.* (emphasis added). Courts grant standing "[i]f there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing." *Id.* However, courts deny standing if "there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues." *Id.* And, finally, the court must "decide if the issues raised by the plaintiff are of *sufficient public importance* in and of themselves to grant [] standing." *Id.* (emphasis added).

Here, Plaintiffs' Complaint alleges alternative public interest standing. Yet, Plaintiffs cannot meet Utah's soon to be extinguished requirements to establish public interest standing for at least three reasons. *First*, there are 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.

A. Plaintiffs Lack Standing Because there are Parties Possessing Greater Interests in the Outcome of this Case.

Plaintiffs' assertion of public-interest standing fails on the greater interest prong. Public-interest standing is proper only when no one "has a greater interest in the outcome of the case than the plaintiff," such that "the issue is unlikely to be raised at all if the plaintiff is denied standing." *Gregory*, 2013 UT 18, ¶13. Crucially, "[t]he Court will deny standing when . . . there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues." *Id.* Demonstrating that "claims are unlikely to be brough by anyone else" is a "necessary part of the showing parties must make." *Id.* ¶37.

Here, those better-situated plaintiffs with a more direct interest in these issues are plain and even acknowledged by Plaintiffs–specifically, administrators of estates seeking to establish pet trusts and those challenging enforceability of the same. Plaintiffs' Complaint identifies parties with a greater ability to challenge H.B. 249. Plaintiffs allege that H.B. 249 "runs afoul of the Open Courts Clause of the Utah Constitution" because it "eliminate[s] all causes of action for the enforcement of pet trusts" as contemplated by Utah's allowance for designating "domestic or pet animals [as] beneficiaries of the fully enforceable trusts with the statutory right to the trust corpus." (Complaint at ¶¶ 81, 86.) Plaintiffs further allege that because "conferral of this single statutory right to the trust corpus makes the nonhuman animal beneficiaries legal persons," thereby providing "nonhuman animal beneficiaries" with "a cause of action if the wills created on their behalf are not properly enforced," H.B. 249 abrogates such causes of action without "provid[ing] an alternative remedy." (*Id.* at ¶¶ 82, 84.) In short, Plaintiffs contend that H.B. 249 "effectively eliminated causes of action seeking to enforce the pet trust statute." (*Id.* at ¶ 85.) But, these allegations are fatal to Plaintiffs' standing.

Any party seeking to establish the type of "pet-trust" described in Plaintiffs' Complaint possesses a greater interest in the outcome of a challenge to the constitutionality of H.B. 249 than the instant Plaintiffs. For example, a disgruntled family member may seek to challenge the will of a parent naming the decedent's pet trust as beneficiary of the estate. Once challenged, the pet trust beneficiary may defend by attempting to assert legal rights to the estate. In that situation, either party's assertions, claims, and defenses likely implicate H.B. 249 as to the creation of a pet trust on the basis now asserted by Plaintiffs. Comparatively speaking, Plaintiffs seek an advisory opinion with no real-world impact, which is well beyond this Court's authority to issue.

In other words, the pet trust portrait painted by Plaintiffs presents a concrete controversy and circumstance where a better-positioned party could make a colorable argument of redressability, unlike Plaintiffs' aloof bystander status in the present case. Thus, there are parties with a greater interest in the outcome who are better positioned to challenge the alleged unconstitutionality.

B. Existing Parties Could Raise this Issue Even if Plaintiffs Lack Standing.

Further, Plaintiffs cannot show that the issues raised are unlikely to be raised or decided if Plaintiffs are denied standing. *See Haymond v. Bonneville Billing & Collections, Inc.,* 2004 UT 27, ¶ 6, 89 P.3d 171 (stating that standing "may be found if the matter is of great public importance, if the plaintiff, although lacking a distinct injury is in as good a position to challenge the alleged illegality as any other potential plaintiff *and if the issue is unlikely to ever be raised if the plaintiff is denied standing to sue*") (emphasis added).

If the pet trust issue warrants a significant place of concern in Plaintiffs' Complaint, then it is likely to be raised by someone else if Plaintiffs are denied standing. These same pet trust parties could raise this issue under a more concrete case or controversy than what exists here.

The requested relief would be the same – a declaration that H.B. 249 unconstitutionally prohibits a decedent from naming a pet as a beneficiary and precludes the administrator from enforcing a trust or protecting legal interests if someone challenges the trust in probate.

To the extent there are meritorious arguments to be made regarding the constitutionality of H.B. 249—a point Defendants certainly do not concede—those arguments can be made by a party with far more at stake than Plaintiffs.[2] Accordingly, Plaintiffs are not the most appropriate party to assert these claims and there is no likelihood that the issues Plaintiffs raise cannot be raised by someone else if Plaintiffs are denied standing.

Even if the pet trust parties do not possess more ability and direct interest in bringing this suit than Plaintiffs, there are other potential scenarios where more appropriate plaintiffs could challenge H.B. 249, if determined to possess the requisite standing. For example, Plaintiffs cite cases in six other states where the NhRP allegedly "worked to obtain legal rights for nonhuman animals . . . such as chimpanzees and elephants." (Complaint at ¶ 16.) Those cases involved chimpanzees in a roadside zoo, internationally born elephants "imported to the US," a chimpanzee "in a cage in a shed on a used trailer lot," elephants in various zoos, chimpanzees housed in a university research lab, elephants part of a traveling circus, and a chimpanzee housed in a storefront.[3]

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[2] Plaintiffs implicitly concede they lack a concrete and particularized injury necessary to assert traditional standing. (*See* Complaint at ¶ 26.) Further, Plaintiffs have been denied standing in similar cases within other jurisdictions. *See e.g., Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc.*, 192 Conn. App. 36, 41, 216 A.3d 839, 842 (2019) (concluding that "trial court's determination that the petitioner lacked standing to file a petition for a writ of habeas corpus on behalf of the elephants was correct")

[3] *See* https://www.nonhumanrights.org/our-clients/; *see also e.g., Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc.,* 192 Conn. App. 36, 38, 216 A.3d 839, 840 (2019) (appealing lower court decision declining to issue a writ of habeas corpus on behalf of three elephants); *Nonhuman Rts. Project, Inc. v. Breheny*, 38 N.Y.3d 555, 197 N.E.3d 921, 923 (2022) (appealing whether Petitioner could seek habeas corpus relief on behalf of "an elephant residing at the Bronx Zoo, in order to secure her transfer to an elephant sanctuary"); *Matter of Nonhuman Rights Project, Inc. v. Stanley,* 2014 N.Y. Slip Op. 68434(U) (2d Dept.2014) (seeking the release of two chimpanzees allegedly confined for research purposes); *Nonhuman Rts. Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 54 N.Y.S.3d 392 (2017) (seeking habeas corpus relief on behalf of two chimpanzees).

Plaintiffs fail to assert why any of those same situations could not arise here in Utah, thereby presenting a plaintiff with a more direct interest who could better litigate the issues. In short, Plaintiffs fail to negate the "question of whether there is anyone who has a greater interest in the outcome of the case than the plaintiff." *Jenkins v. Swan*, 675 P.2d at 1150. When compared with any of these hypothetical plaintiffs, Plaintiffs cannot satisfy the salutory requirement of showing a real and personal interest in the dispute, let alone one greater than other potential parties.

C. Plaintiffs Fail to Allege an Issue of Significant Public Importance Justifying Alternative Standing.

Moreover, Plaintiffs cannot demonstrate a significant issue of public importance to justify alternative standing. Nor have Plaintiffs alleged any facts supporting the same. First, that Plaintiff cannot find a party with a more real and personal interest who has experienced direct harm by H.B. 249 demonstrates the absence of public importance on the issues raised in Plaintiffs' Complaint. There is no public clamor for endowing animals with human rights, no appetite for these types of suits, and no public outcry against H.B. 249. If this issue were one of significant public importance, the courts would likely see a steady stream of these cases crop up across the state. But there is not. Indeed, as evidenced by the people's representatives' passage of H.B. 249, most Utah citizens do not want to confer legal personhood on nonhuman animals with all its implications, including closing zoos and aquariums, eliminating hunting, preventing use of animals for labor, breeding, and scientific research, and no killing of animals for medicine, clothes, or food, *etc*.

Second, Plaintiffs cite *Sierra Club* in support of its plea for public-interest standing. (*See* Complaint at ¶¶ 26-35.) However, *Sierra Club* does not help Plaintiffs' cause. The *Sierra Club* plaintiffs challenged approval of a 270–megawatt coal-fired power plant in Sevier County for

failure to comply with the Clean Air Act, among other laws, and the potential for carbon dioxide and other greenhouse gas emissions. *See Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, 148 P.3d 960. Notably, the court found plaintiffs possessed an even greater interest than a large group of citizens who lived near, and thus would be heavily impacted by, the proposed site. *See id.*

When it comes to significant public importance, the issues in *Sierra Club* are a far cry from those presented here. The Sierra Club was granted standing because their claims sought to "prevent any needless and unlawful pollution or other environmental destruction." *Utah Chapter of Sierra Club*, 2006 UT 74, ¶ 42. It is one thing for the Sierra Club to assert claims as to long-term health and environmental impacts of air pollution for many Utah citizens caused by the building of a specific power plant. It is another thing altogether for Plaintiffs to seek to establish legal personhood of animals "in general." *Sierra Club* is clearly distinguishable. The issue Plaintiffs seek to raise are not "of sufficient public importance in and of itself" to warrant granting Plaintiffs standing.

Third, Plaintiffs have not identified or alleged which legal rights relating to legal personhood should be extended to nonhumans. If this were an issue of significant public importance, surely Plaintiffs could plainly identify these rights. But, Plaintiffs' failure to identify the specific rights at issue is understandable considering no "court in any other jurisdiction in the United States has ever recognized the legal 'personhood' of any nonhuman species." *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, ¶ 30, 562 P.3d 63, 70, *reh'g denied* (Feb. 10, 2025).

Regardless, Plaintiffs fail to draw any lines surrounding whether a nonhuman entity, such as animals represented by Plaintiff in other matters, should be granted the rights possessed by humans, including: 1st Amendment right to vote, worship, speak, or assemble; 2nd Amendment

right to bear arms; 13th Amendment right to be free from slavery; or, 14th Amendment rights to citizenship, equal protection, and due process. Nor do Plaintiffs define which nonhuman entities should receive legal personhood status with its associated rights and which should not. For example, are dolphins more deserving of these rights than dogs? Are dogs more deserving than squirrels? And where do ants fall in the endowment of rights? Without clearly drawing these boundaries, Plaintiffs' requested relief is likely to create unforeseen legal quandaries and confusion.

Contrary to Plaintiffs' assertions, the "public interest" on this issue is advanced by avoiding such outcomes. Numerous "courts have rejected these types of claims, among other reasons, due to concerns regarding the unintended consequences of recognizing nonhuman animals as persons." *Cheyenne Mountain*, 2025 CO at ¶ 31, 562 P.3d at 70. As other courts have stated, "[g]ranting legal personhood to a nonhuman animal . . . 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[,] . . . and medical research efforts." *Nonhuman Rts. Project, Inc. v. Breheny*, 38 N.Y.3d 555, 176 N.Y.S.3d 533, 197 N.E.3d 921, 929 (2022); *see also Lewis v. Burger King*, 344 Fed. App'x 470, 472 (10th Cir. 2009) (holding "Lady Brown Dog, as a dog and putative co-plaintiff, lacks standing to sue under the ADA (or any other civil rights statute)").

Accordingly, because Plaintiffs cannot demonstrate standing, this Court lacks jurisdiction to consider the merits of Plaintiffs' claims. Defendants' Motion should be granted and Plaintiffs' Complaint dismissed.

II. PLAINTIFFS CANNOT PREVAIL ON A FACIAL CONSTITUTIONAL CHALLENGE OF H.B. 249.

Plaintiffs allege "H.B. 249 is vague and unconstitutional on its face." (Complaint at ¶ 2.) However, Plaintiffs cannot prevail on this basis. "All statutes are presumed to be constitutional and the party challenging a statute bears the burden of proving its invalidity." *Blue Cross & Blue Shield*

of Utah v. State, 779 P.2d 634, 637 (Utah 1989) (citing *City of West Jordan v. Retirement Bd.,* 767 P.2d 530, 537 (Utah 1988); *Baker v. Matheson,* 607 P.2d 233, 236 (Utah 1979); *State Tax Comm'n v. Wright,* 596 P.2d 634, 636 (Utah 1979)).

Utah courts have a "'strong reluctance' to proclaim a legislative action facially unconstitutional." *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 251 (Utah Ct. App. 1998) (quoting *Salt Lake City v. West Gallery Corp.,* 584 P.2d 839, 840 n. 1 (Utah 1978)); *see also State v. Herrera,* 1999 UT 64, 993 P.2d 854, 857 ("[a] facial challenge is the most difficult because it requires the challenger to '"establish that no set of circumstances exists under which the [statute] would be valid.'" (quoting *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)); *Gillmor v. Summit Cnty*., 2010 UT 69, ¶ 27, 246 P.3d 102, 109. Further, courts resolve any doubts in favor of a law's constitutionality. *See Ellis v. Social Servs. of Dep't of Church of Jesus Christ of Latter–Day Saints,* 615 P.2d 1250, 1255 (Utah 1980). Plaintiffs "bear[] the 'heavy burden' of successfully attacking the ordinance." *Smith*, 958 P.2d at 245.

Importantly, "in asserting a facial challenge, [a] party avers that the statute is so constitutionally flawed that no set of circumstances exists under which the [statute] would be valid." *Gillmor*, 2010 UT 69 at ¶ 27. Here, Plaintiffs allege there are no set of circumstances where H.B. 249 is constitutionally valid. (*See* Complaint at ¶ 53.) This Court should reject Plaintiffs' erroneous assertion. There are many circumstances under which H.B. 249 would be constitutional. For example, it would be constitutional for H.B. 249 to prohibit "granting or recognizing legal personhood" on a nonhuman animal for purposes of the right to contract. The same could be said as to granting or recognizing a nonhuman animal's right to vote, or the fundamental due process right of an ant and an aardvark to enter into a marriage with each other. Surely, Plaintiffs would not argue that H.B. 249 is unconstitutional in those contexts.

Even then, many jurisdictions recognize animals as objects of personal property. *See Mayfield v. Bethards*, 826 F.3d 1252, 1259 (10th Cir. 2016) (citing multiple cases "clearly establish[ing] that animals, including dogs, constitute personal property protected by the Fourth Amendment"). Further, the "ascription of rights has historically been connected with the imposition of societal obligations and duties." *People ex rel. Nonhuman Rights Project, Inc.* v. *Lavery*, supra, 124 App. Div. 3d at 151, 998 N.Y.S.2d 248. Animals are not entitled to human rights, in part, because they cannot fulfill the obligations and duties that accompany those rights. Accordingly, there are many sets of circumstances under which H.B. 249 is constitutionally valid, thus defeating Plaintiffs' facial challenge from the outset.

III. PLAINTIFFS' SEPARATION OF POWERS, FRANCHISES FORBIDDEN, AND JUDICIAL FUNCTION CLAIMS SHOULD BE DISMISSED

Plaintiffs bring claims under the Separation of Powers, Franchises Forbidden, and Judicial Function Clauses, alleging that H.B. 249 wrongfully abrogates a courts' common law authority and essentially handcuffs "future legislatures from determining whether a nonhuman entity can be granted a legal right. . . ." (Complaint at ¶ 73.) Specifically, Plaintiffs allege H.B. 249 oversteps legislative power by "eliminat[ing] the possibility of any court even considering the recognition of legal personhood in any entity that is not a human." (Complaint at ¶¶ 11, 61.) Thus, according to Plaintiffs, H.B. 249 constitutes a "legislative attempt to mandate legal conclusions," thereby wrongfully "usurp[ing] the judiciary's proper sphere of action in common law matters." (*Id.* at ¶¶ 11-12; *see also id.* at ¶¶ 96-100 (alleging "H.B. 249 is facially unconstitutional because it also permits a third party (here, the 2024 Utah Legislature) to finally dispose of cases at the direct expense of the judiciary").

Plaintiffs propound these claims because H.B. 249 supposedly "prohibits the Utah judiciary and any Utah legislative assembly from ever granting any legal right to any entity in

Utah that is not a member of the species *Homo sapiens*." (*Id.* at ¶ 52). In other words, H.B. 249's legislation of "legal personhood . . . has effectively removed the Utah judiciary's common law decision-making powers." (*Id.* at ¶¶ 56, 61; *see also id.* at ¶ 99 (alleging that "the Utah Legislature cannot determine the outcome of causes of action arising under the common law"). Curiously, Plaintiffs go so far as to allege that H.B. 249 "precludes future legislatures from determining whether a nonhuman entity can be granted a legal right no matter how far society has progressed." (*Id.* at ¶ 73.) And Plaintiffs contend H.B. 249 takes legal personhood "off the proverbial table for all time. . . ." (*Id.* at ¶ 74.) Despite Plaintiffs' hyperbole, their allegations are flat wrong.

H.B. 249 does not preclude future Utah legislatures from further action. H.B. 249 is not "set in stone" with no prospects of subsequent alteration. H.B. 249 does not contain any language or provisions prohibiting future legislative sessions from readily amending or repealing H.B. 249 under existing rules. Even then, despite H.B. 249, courts can still determine the confines of H.B. 249 or assess its constitutionality (assuming a plaintiff can properly assert standing).

Of course, the common law plays an important role in judicial authority and process. However, contrary to Plaintiffs' unsupported allegations and erroneous legal conclusions, in Utah, "the legislature is empowered to recalibrate and even reverse [a court's] common-law decisions." *Utah Stream Access Coal. v. VR Acquisitions, LLC*, 2019 UT 7, ¶ 60, 439 P.3d 593, 606; *see also id.* at ¶ 4, 596 (stating that a Utah "court's common-law decisions are subject to adaptation or reversal by the legislature").

Indeed, the Utah Constitution vests the legislature with broad and plenary legislative power. *See id.* at ¶ 87, 610. In *Utah Stream Access*, the Court clearly explained that if a particular rule of law (*e.g.* "scope of easement") "is rooted only in common-law . . . then the legislature is free to override [the court's] analysis." *Id.* In other words, that broad legislative power

"encompasses the right to second-guess or override the standards set forth in [a court's] common-law decisions." *Id.* (citing *Anderson v. Bell*, 2010 UT 47, ¶ 16 n.5, 234 P.3d 1147 (putting forth the "fundamental principle that . . . the legislature has the authority to abrogate the common law")).

Accordingly, Plaintiffs' allegation that H.B. 249 violates Separation of Powers by "mandating how a common law court in Utah must rule when the question of legal personhood is before it" (*see* Complaint at ¶ 67) is not correct. If a court's decision is grounded in common law, and not the constitution, the legislature retains authority to pass or amend the law.

IV. PLAINTIFFS' OPEN COURTS CLAUSE CLAIM FAILS BECAUSE THIS CLAUSE DOES NOT PERTAIN TO NONHUMAN ANIMALS

Plaintiffs allege H.B. 249 violates the Open Courts Clause of the Utah Constitution. (*See* Complaint at ¶¶ 76-86.) Specifically, Plaintiffs assert the Open Courts Clause "declares that an individual shall have a right to 'remedy by due course of law,'" as well as "guarantee[d] access to the courts and a judicial procedure based on fairness and equality." (*Id.* at ¶ 78.) Further, Plaintiffs allege that H.B. 249 fails the *Berry* test[4] for evaluating whether legislation violates the Open Courts Clause by abrogating a cause of action without providing an alternative remedy or "eliminating a clear social or economic evil." (*Id.* at ¶¶ 79-80.) But Plaintiffs' allegations, even if accepted as true, cannot salvage their claim.

Plaintiffs cannot overcome the threshold issue of the Open Courts Clause before engaging in the *Berry* test. Namely, the Open Courts Clause exists to guarantee *people* access to courts, not nonhuman animals. The Open Courts Clause uses the term *person five* separate times. It specifically states that "[a]ll courts shall be open, and every *person*, for an injury done to the

[4] As alleged by Plaintiffs, *Berry* contains a "three-part test to determine whether legislation violates the Open Courts Clause." Complaint at ¶ 79. These "three parts" are: (1) whether the legislature abrogated a cause of action; (2) is there an effective and reasonable alternative; and, (3) if no alternative remedy, did the legislature's act eliminate a "clear social or economic evil." (*Id.*)

person in his or her *person*, property, or reputation, shall have remedy by due course of law . . . and no *person* shall be barred from . . . any tribunal in this State . . . any civil cause to which the *person* is a party." Utah Const. art I, § 11 (emphasis added). It is *people* who possess the right to a remedy by due course of law. And, here, H.B. 249 cannot be found to violate the Open Courts Clause because nothing in the statute prevents *people* from access to Utah courts.

When the Open Courts Clause refers to *a person* it means *a person*. For instance, a statute is compliant with the Open Courts Clause if, when abrogating a cause of action, it "provides an injured *person* an effective and reasonable alternative remedy by due course of law for vindication of his constitutional interest." *Velarde v. Board of Review of Indus. Comm'n*, 831 P.2d 123, 126 (Utah Ct. App. 1992) (emphasis added). Of importance, the *Velarde* Court did not refer to an injured *nonhuman animal*, but rather to an injured *person*. Indeed, *Velarde* specifically dealt with a, notably human, debt collector obtaining equal access to the courts under the Utah Collection Agency Act. In short, *Velarde* mentioned the only entity for which the Open Courts Clause applies, a *person*. Here, H.B. 249 does not apply to a *person,* let alone remove a private cause of action for an injured *person*, and therefore has no need to supply "an effective and reasonable alternative remedy" under *Berry* for anybody or anything.

Even then, although comprising the current test, *Berry* has long been criticized by the Utah judiciary. Undeniably, "various members of [the Utah Supreme Court] have, with varying degrees of vehemence, assailed *Berry*'s test and its underlying reasoning." *Waite v. Utah Lab. Comm'n*, 2017 UT 86, ¶ 95, 416 P.3d 635, 661 (Pearce, J., concurrence) (citing *Craftsman Builder's Supply, Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶ 108, 974 P.2d 1194 (Zimmerman, J., concurring) ("I would overrule *Berry.*"); *Laney v. Fairview City*, 2002 UT 79, ¶ 85, 57 P.3d 1007 (Wilkins, J., concurring in part and dissenting in part) ("I would overturn *Berry* in favor of the more procedural interpretation of the Open Courts Clause. . . ."); *Wood v. Univ. of Utah Med.*

Ctr., 2002 UT 134, ¶ 9 n.1, 67 P.3d 436 (two justices stated that a prior decision adhering to "the *Berry* interpretation and test was erroneous" but applied *Berry* out of respect for stare decisis)).

Clearly, the Utah Supreme Court, "past and present, [does] not agree that *Berry* is the best method for analyzing Open Courts challenges." *Laney*, 2002 UT 79, ¶ 93, 57 P.3d 1007 (Wilkins, J., concurring in part and dissenting in part). Some Judges on the Court have gone so far as to call *Berry*'s interpretation of the Open Courts Clause "erroneous," "unworkable," "not . . . adhered to unanimously," "questioned and chastised" by the Court, "criticized by legal scholars," "presents separation of powers problems," and overall "create[s] more problems than it has solved." *Id.* at ¶ 94.

Regardless of the wisdom of *Berry*'s rationale, *Berry* is distinguishable from the instant case because, unlike Plaintiffs' allegation that H.B. 249 abrogates a cause of action from a *nonhuman animal*, *Berry* looked at "whether the legislature has abrogated a cause of action" from a *person*. The plaintiff in *Berry* alleged that Section 3 of the Utah Product Liability Act abrogated a wrongful death action against an aircraft corporation on behalf of the plaintiff and her children for the death of her husband and their father in an airplane crash. *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 671 (Utah 1985). *Berry* involved a *person* challenging their ability as a *person* to bring a civil cause of action. Nothing in *Berry* can be seen as extending the meaning of *person* to nonhuman animals for purposes of the Open Courts Clause, nor do Plaintiffs identify any other case that would do the same. And H.B. 249 cannot be seen as prospectively abrogating a private cause of action even if Plaintiffs' allegations were brought on behalf of an actual *person*.

Regardless, neither the plain language of the Open Courts Clause nor the framers' intent behind the clause evidence any desire to provide rights under the Open Courts Clause to anything other than a *person*. Discerning original intent of language within the Utah Constitution

entails a review of a statute's plain language informed by "historical evidence of the framers' intent." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 10, 140 P.3d 1235. Utah court's "have long endorsed combing 'the record of debates during [Utah's] constitutional convention' for 'extrinsic evidence of the framers' intent' [in order to] 'inform our understanding' of a constitutional provision's original public meaning by providing 'instances of usage of the words' in question 'that are likely to reflect the senses in which the words would have been understood by the public.'" *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 24, 466 P.3d 178, 185 (quoting *P.I.E. Emps. Fed. Credit Union v. Bass*, 759 P.2d 1144, 1146 (Utah 1988) and *S. Salt Lake City v. Maese*, 2019 UT 58, ¶¶ 30-33, 450 P.3d 1092). Here, Plaintiffs have not met their burden to identify any historical evidence that the word "person" means a nonhuman animal under the Open Courts Clause, without which this Clause has no relevance to Plaintiffs' claim. For these reasons, Plaintiffs' claim should be dismissed.

V. PLAINTIFFS' CLAIMS VIOLATE THE POLITICAL QUESTION DOCTRINE

Rather than H.B. 249 violating the Separation of Powers Clause, as Plaintiffs allege, it is Plaintiffs' claims that violate Separation of Powers under the political question doctrine. The Utah Supreme Court has articulated doctrines that safeguard the separation of powers; one of these is the political question doctrine. The Separation of Powers Clause and the political question doctrine "focus on the proper roles of each branch of government and aim to curtail the interference of one branch in matters controlled by the others." *Matter of Childers-Gray*, 2021 UT 13, 487 P.3d 96 (citing *Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995)). The political question doctrine is a "tool for maintenance of government order." *Id*. (quoting *Baker v. Carr*, 369 U.S. 186, 215 (1962)).

To apply the political question doctrine, the Utah Supreme Court follows the test outlined in the United States Supreme Court case of *Baker v. Carr*. It asks whether the claim involves:

> textually demonstrable constitutional commitment of the issue to a coordinate political department; *or* a lack of judicially discoverable and manageable standards for resolving it; *or* the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; *or* the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government.

Matter of Childers-Gray, 2021 UT at ⁋ 64 (quoting Baker, 369 U.S. at 217) (emphasis added). "To find a political question, [courts] need only conclude that one [of these] factor[s] is present, not all." *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005).

Here, at least two, if not all, factors of the political question doctrine can be met. First, there is a clear lack of judicially discoverable and manageable standards for resolving the issue of nonhuman animal rights. Social policies regarding bestowal of rights where no such rights have ever been recognized contain numerous issues and elements lacking judicially discoverable and manageable standards.

Second, 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 initial policy determination from the Court protruding into forbidden areas of nonjudicial discretion. For instance, the United States Supreme Court has held that the creation of a private right of action "is one better left to legislative judgment in the great majority of cases." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727, 124 S. Ct. 2739, 2762–63, 159 L. Ed. 2d 718 (2004); *see also Bleazard*, 2024 UT 17, ¶ 37 (holding that if a "statute creates new legal requirements but does not grant plaintiffs a corresponding right to sue to enforce those requirements, the plaintiffs lack a legally protectible interest in the controversy, and the declaratory judgment action must be dismissed because it is not justiciable"). And if legislative judgment rules the day on the issue of creating private rights of action, it most certainly would do so on the issue of ascribing rights of legal personhood to nonhuman animals. In other words, significant policy issues, such as nonhuman animal rights, are best left to the legislative branch in its policy making role.

VI. EVEN IF PLAINTIFFS' CLAIMS SURVIVE, THEY ARE NOT REDRESSABLE BY GOVERNOR COX OR ATTORNEY GENERAL BROWN.

Plaintiffs' Complaint names three defendants for its claims: the State, Attorney General, and Governor. (*See* Complaint at ¶¶ 18-20.) Plaintiffs allege the State "is responsible for upholding the Utah Constitution and accompanying legislation" and "enacted H.B. 249. . . ." (*Id.* at ¶ 18.) Plaintiffs further allege that the Attorney General is a proper Defendant because he "exercises supervisory power over local prosecutors" and assists them "in discharging their duties." (*Id.* at ¶ 19.) Plaintiffs also allege that the Governor is an appropriate Defendant because "he may direct the attorney general to appear on behalf of the state [while requiring him] to aid any county [sic] attorney or district attorney." (*Id.* at ¶ 20.) However, Plaintiffs' naming of the Governor and Attorney General as Defendants is misplaced. Thus, even if this Court declines to dismiss Plaintiffs' claims, both the Governor and Attorney General should still be dismissed.

Plaintiffs allege that H.B. 249 violates four clauses under the Utah Constitution: Separation of Powers; Franchises Forbidden; Open Courts; and Judicial Function. At their core, each claim stems from Plaintiffs' legal assertion that "H.B. 249 prohibits the Utah *judiciary* and any Utah *legislative assembly* from ever granting any legal right to any entity in Utah that is not a member of the species *Homo sapiens*." (Complaint at ¶ 52) (emphasis added).[5] Notably, Plaintiffs are not challenging enforcement of H.B. 249. Nor could they as there is no enforcement provision anywhere in the law.

Glaringly absent from Plaintiffs' Complaint is any allegation that H.B. 249 implicates the Governor and Attorney General in their respective roles. H.B. 249 defines "Governmental entity" as either a court, the legislature, legislative body of a political subdivision, or an entity with

[5] The same deference normally afforded to Plaintiffs' factual allegations in a motion to dismiss does not extend to legal conclusions and assertions, and therefore a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain,* 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986).

adjudicatory or rulemaking authority. (*See id.* at ¶ 51) None of those definitions include the Governor or Attorney General or provide either with the ability to provide relief to Plaintiffs.

A longstanding legal principle asserts that the court's judgment must have an effect on the defendant that redresses the plaintiff's injury, whether directly or indirectly. *See Ash Creek Min. Co. v. Lujan*, 969 F.2d 868, 875 (10th Cir. 1992) (the redressability inquiry looks to whether "the *relief requested* will redress the injury claimed") (emphasis added); *see also Cox v. Phelps Dodge Corp.*, 43 F.3d 1345,1348 (10th Cir.1994) ("[W]hat makes a declaratory judgment action 'a proper judicial resolution of a 'case or controversy' rather than an advisory opinion is the settling of some dispute *which affects the behavior of the defendant* toward the plaintiff'") (superseded by statute on other grounds) (emphasis added) (quoting *Hewitt v. Helms*, 482 U.S. 755, 761, 107 S.Ct. 2672, 96 L.Ed.2d 654 (1987)).

For instance, the Utah Supreme Court's decision in *Carlton* is instructive regarding the connection between improper defendants and redressability. There, a putative father filed a petition to establish paternity after the adoption proceedings for the child in question had been finalized. He sought to declare Utah's Adoption Act unconstitutional and named, as respondents in the case, an adoption center and the biological mother, but not the adoptive parents. The Court determined that the absence of the adoptive parents rendered the putative father's constitutional claims non-justiciable because they were not redressable. Without the adoptive parents as parties, there was no relief to be granted to the putative father. "Mr. Calton lacks standing to assert these claims because his injury cannot be redressed by this court unless the Adoptive Parents are parties to this case . . . so despite the fact that Mr. Carlton's constitutional claims may have merit, he lacks standing to bring them because they are not redressable by this court until the Adoptive Parents are added to the action." *Carlton v. Brown*, 2014 UT 6, ¶ 28, 323 P.3d 571, 579-80. Conversely, the biological mother and the adoption center had no rights to relinquish;

thus, her presence in the case would not redress the putative father's constitutional claims. "Mr. Carlton's constitutional arguments and proposed remedies do not implicate the rights of either Ms. Brown or Adoption Center[.]" *Id.*

Similarly here, the Governor's and Attorney General's presence in this case does nothing to redress Plaintiffs' claimed injuries or provide its sought after declaratory judgment. There is no judicial outcome by way of Plaintiffs' requested declaratory relief that would affect the behavior of the Governor and Attorney General toward Plaintiffs, without which Plaintiffs' declaratory judgment action against those Defendants becomes a mere advisory opinion rather than a proper judicial resolution of a case or controversy. In short, there is no relief that the Court could order against Governor Cox and Attorney General Brown that would assist Plaintiffs. Without redressability, Plaintiffs lack standing to sue Governor Cox and Attorney General Brown, and both should be dismissed as parties from this matter.

CONCLUSION

For reasons set forth herein, Defendants respectfully request that this Court grant Defendants' Motion and dismiss all of Plaintiffs' claims, with prejudice.

DATED this 21st day of March, 2025.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Keith Barlow
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CERTIFICATE OF SERVICE

I certify that on March 21, 2025, a true and correct copy of the foregoing, *Defendants' Motion to Dismiss and Memorandum in Support Thereof*, was filed using the Court's electronic filing system, which gave notice to the following:

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Legal Secretary

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- at least 14 days before the hearing, if the motion will be decided by a commissioner.

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- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

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