

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on behalf
of HAPPY,

Petitioner,

v.

JAMES J. BREHENY, in his official capacity as Executive
Vice President and General Director of Zoos and Aquariums
of the Wildlife Conservation Society and Director of the
Bronx Zoo, and WILDLIFE CONSERVATION SOCIETY,

Respondents.

VERIFIED ANSWER

Index No. 18-45164

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Respondents James J. Breheny and the Wildlife Conservation Society

(collectively, "Respondents"), by their attorneys, Phillips Lytle LLP, answer the Verified
Petition ("Petition") of the Non-Human Rights Project, Inc. ("NRP") in this special
proceeding as follows:

1. Paragraphs 1 and 2 characterize the relief sought by NRP in this special proceeding, and state legal conclusions concerning the same, to which no response is required. To the extent a response is required, Respondents deny these allegations.
2. Respondents deny paragraph 3 of the Petition.
3. Paragraphs 4, 5, and 6 purport to summarize *In re Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018) (Fahey, J. concurring), and Respondents refer to that opinion for its complete and accurate content, and otherwise deny the allegations in Paragraphs 4, 5, and 6 of the Petition.

4. Paragraphs 7, 8, 9, 10, and 11 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

5. Paragraph 12 purports to summarize *In re Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018) (Fahey, J. concurring), and *People v. Graves*, 163 A.D.3d 16 (4th Dep't 2018), and Respondents refer to those opinions for their complete and accurate content, and otherwise deny the allegations in Paragraph 12 of the Petition.

6. Paragraph 13 purports to summarize *In re Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018) (Fahey, J. concurring), *Byrn v. New York City Health and Hospitals Corp.*, 31 N.Y.2d 194 (1972), and *People v. Graves*, 163 A.D.3d 16 (4th Dep't 2018), and Respondents refer to those opinions for their complete and accurate content, and otherwise deny the allegations in Paragraph 13 of the Petition.

7. Paragraph 14 characterizes the relief sought by NRP in this special proceeding, and state legal conclusions concerning the same, to which no response is required. To the extent a response is required, Respondents deny these allegations.

8. Paragraphs 15, 16, and 17 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

9. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, and therefore deny these allegations.

10. The first and second sentences in paragraph 19 state legal conclusions that do not require a response. Admit only that elephants are intelligent and social animals, and otherwise deny the allegations in paragraph 19 of the Petition.

11. Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

12. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and therefore deny these allegations.

13. The first sentence in paragraph 38 is a legal conclusion that does not require a response. To the extent a response is required, Respondents deny the allegation. In response to the balance of paragraph 38, upon information and belief admit only that (i) Happy is an approximately 48 year-old female Asian elephant who "was captured in the wild and imported to the United States" when she was young; (ii) Happy was purchased by the Lion Country Safari, Inc. and lived elsewhere until approximately 1977; (iii) Happy, and a second elephant known as "Grumpy," arrived at the Bronx Zoo in or around 1977; (iv) Happy previously participated in events and gave rides but has not done so in decades; (v) Grumpy died in or around 2002, after she was attacked by two other elephants known as "Patty" and "Maxine"; (vi) in or around 2002, a female Asian elephant known as "Sammy" was introduced into Happy's environment at the Bronx Zoo; and (vii) Sammy died in or around 2006. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegation "[i]n 2005, Happy became the *first* elephant to pass the mirror self-recognition test, considered to be a true indicator of an animal's self-awareness and "[t]hought to correlate with higher form of empathy and altruistic behavior,'" and therefore, Respondents deny these allegations. Respondents deny the remaining allegations in paragraph 38.

14. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and therefore deny these allegations.

15. Respondents admit the allegations in paragraphs 40 and 41.

16. Paragraphs 42, 43, 44, 45, and 46 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

17. Respondents deny the allegations in paragraph 47.

18. Paragraphs 48 and 49 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

19. Regarding paragraph 50, Respondents deny that an order to show cause must be issued on behalf of Happy. The remainder of the allegations in paragraph 50 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

20. Paragraph 51 states legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

21. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 52 and therefore deny these allegations.

22. Paragraph 53 states legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

23. Regarding paragraph 54, Respondents deny that Happy's current living conditions are in any way unlawful. The remainder of the allegations in paragraph 54 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

24. Paragraphs 55 and 56 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

25. Regarding paragraph 57, Respondents deny that they may be compelled to transfer Happy to the PAWS sanctuary. The remainder of the allegations in paragraph 57 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

26. Paragraphs 58, 59, and 60 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

27. Paragraph 61 purports to summarize *In re Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018) (Fahey, J. concurring), and Respondents refer to that opinion for its complete and accurate content, and otherwise deny the allegations in paragraph 61 of the Petition.

28. Paragraphs 62 and 63 state legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

29. Respondents deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 64, 65, 66, 67, 68, and 69, and therefore deny these allegations.

30. Paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, and 117 are summaries of affidavits submitted by NRP in support of its Petition, and Respondents refer to them for their complete and accurate content. To the extent NRP purports to allege specific factual findings or observations made in the studies described in these paragraphs, Respondents deny

knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore deny any such allegations.

31. Paragraph 118 states legal conclusions to which no response is required. To the extent a response is required, Respondents deny these allegations.

FIRST DEFENSE

32. Happy's living conditions are in all ways lawful.

SECOND DEFENSE

33. The Petition should be dismissed because it does not concern an imprisoned person.

THIRD DEFENSE

34. The Petition should be dismissed because it seeks to change the conditions of Happy's confinement and does not seek her immediate release from confinement.

FOURTH DEFENSE

35. NRP is barred from seeking the relief demanded in the Petition under the doctrine of collateral estoppel because the issues raised in the Petition were necessarily decided in prior litigation in which NRP had a full and fair opportunity to address them.

FIFTH DEFENSE

36. The Petition should be dismissed under CPLR 7003(b) as a successive petition for a writ of habeas corpus.

SIXTH DEFENSE

37. NRP lacks standing to bring the Petition.

SEVENTH DEFENSE

38. The Petition seeks relief that is barred by the United States Constitution and the New York State Constitution, including without limitation the fundamental principles of due process under the laws of the State of New York and the United States.

EIGHTH DEFENSE

39. The Petition fails to satisfy a condition precedent to the grant of a writ of habeas corpus, including without limitation: (i) a petitioner who is a person; (ii) a violation of due process; and (iii) circumstances rendering continued restrictions on bodily liberty unlawful.

NINTH DEFENSE

40. The Petition seeks relief that is barred by illegality.

TENTH DEFENSE

41. The Court lacks subject-matter jurisdiction over NRP's Petition because Happy is not a person.

ELEVENTH DEFENSE

42. The Court lacks personal jurisdiction over Happy because Happy is not a person.

TWELFTH DEFENSE

43. The Petition asks the Court to render an advisory opinion concerning a legislative and/or political question, and thus it does not identify a justiciable controversy.

THIRTEENTH DEFENSE

44. The Petition violates the doctrine of separation of powers because NRP seeks relief that should be requested from the New York State Legislature.

FOURTEENTH DEFENSE

45. The relief sought in the Petition is barred by the applicable statutes of limitation and/or repose.

FIFTEENTH DEFENSE

46. NRP does not have a legitimate legal interest in the relief sought in the Petition and cannot establish an injury-in-fact.

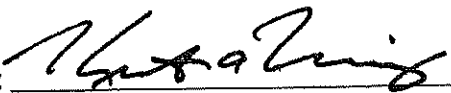
SIXTEENTH DEFENSE

47. To the extent it states any viable grounds for relief, the Petition seeks relief that would not serve Happy's best interests.

WHEREFORE, Respondents James J. Breheny and the Wildlife Conservation Society respectfully request that the Court enter judgment for them and against Petitioner the Nonhuman Rights Project, Inc.

Dated: Buffalo, New York
July 1, 2019

PHILLIPS LYTTLE LLP

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