
RESPONSE

WRITING ABOUT NONPERSONS

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In response to Brandon L. Garrett, *The Constitutional Standing of Corporations*, 163 U. Pa. L. Rev. 95 (2014).

INTRODUCTION

Professor Garrett's article on the constitutional standing of corporations employs the heuristic of "effective" litigation to unpack the lack of symmetry between organizations and individuals when personal rights are concerned.¹ *Hobby Lobby* marks an apotheosis of the recent doctrinal push for corporate persons to become simply *persons*.² The corporate structure has now become a vehicle for associations to actualize their broader instrumental ambitions. Justice Alito, writing for the majority, suggests 501(c)(3) organizations might choose to incorporate so as to make political statements.³ His opinion recognizes an identity of spiritual orientation between the plaintiff company's management cadre and its 13,000 member⁴ workforce. Gone is the Kierkegaardian archetype of the existential pilgrim, or the Joycean expression of the epiphany. The deeply interior feeling of religious expression has given way to a judicial calculus crafted in aggregate impersonal language, of a tendency to a mean statistic. So long as an association can articulate an injury that is "germane to the organization's purpose" (an asymptotic test) then it

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¹ Brandon L. Garrett, *The Constitutional Standing of Corporations*, 163 U. PA. L. REV. 95, 153-56 (2014).

² See generally *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

³ See *id.* at 2771 (suggesting non-profits might create a corporate entity to permit "lobbying for legislation or campaigning for political candidates").

⁴ *Id.* at 2765.

may stand in court.⁵ But should this analytic extend to corporations? In *Hobby Lobby*, the winning brief reduces the “independent” choices of less evangelical employees to outlier data points.⁶ This writing away of company employees should not have legs. However, animals often do have legs—so a related question, who should stand in court for animals? Themselves?

Garrett correctly derides this group–individual equation for personal constitutional rights as bad logic and bad policy. I also agree with Professor Garrett’s instinct to divorce the magic language of personhood from standing,⁷ and to instead employ a consequentialist inquiry where standing flows from the constitutional right, rather than the legal status of the concerned party.⁸ However, I have two responses to Professor Garrett. What does “effective litigation” mean? And, are there prudential concerns that should quiet his call for constitutional rules of recognition to be “drawn broadly and evenhandedly” to build doctrinal coherence?⁹ I argue in this Response that the legal writing analytic of core theory provides a proxy for this heuristic of effective litigation, but that recognition of the analogue debate of “animals as 14th Amendment persons” might destroy the already fractured architecture of standing doctrine.

I. EFFECTIVENESS AS SYMMETRY

Professor Garrett’s reference to effectiveness can be interpreted at two levels of abstraction. At a threshold level Garrett seems to ask whether we can conceive of a constitutional protection benefiting the corporate person.¹⁰ I understand this inquiry to go to a valence of feel or fit—whether the constitutional right at issue is readily intuited as something of which a corporation could make use. Corporate due process rights to property meet this intuitive test; corporate marriage rights do not. But this inquiry produces strange results when applied to animals. Can animals marry?¹¹ How does

⁵ Kelsey McCowan Heilman, Comment, *The Rights of Others: Protection and Advocacy Organizations’ Associational Standing to Sue*, 157 U. PA. L. REV. 237, 251 (2008) (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

⁶ See Brief for Respondents at 15, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (No. 13-354), 2014 WL 546899 (“The government’s suggestion that the burden is too ‘attenuated’ to warrant relief is just a backdoor effort to question the sincerity of Respondent’s religious beliefs. Respondents object to being forced to facilitate abortion by providing abortifacients, and that objection does not turn on the independent decisions of their employees.”).

⁷ See Garrett, *supra* note 1, at 107 (“[C]alling corporations ‘persons’ may not be a helpful usage.”).

⁸ See *id.* at 103 (“Constitutional rights are framed generally, often imposing limitations on the government or recognizing general privileges or immunities, but not by creating individual-specific tests.”)

⁹ *Id.* at 163.

¹⁰ *Id.* at 110.

¹¹ See Natalie Umansky, *12 Unbelievable People Who Married Animals*, ODDEE (Nov. 13, 2013), http://www.oddee.com/item_98774.aspx [https://perma.cc/45DR-ZF]3].

declawing cats intersect with a right to bear arms?¹² Do elephants possess copyright to their paintings?¹³ Professors Michael McGuire and Lionel Tiger have speculated in *God's Brain* on whether the communal chill sessions of chimpanzees represent a proto-religious form of communion¹⁴—do they earn First Amendment protection as religious expression? These confounding thought exercises might motivate judges and scholars to recognize animals as a *sui generis* group among this intermediate category of quasi-persons, which may include corporations, ships, fetuses, robots,¹⁵ and future generations.¹⁶

Garrett's more important and more pragmatic question is the corollary of whether the concerned (corporate) constitutional rights can be "effectively" litigated.¹⁷ Here this word choice comprises a separate evaluative test of how well—or to what extent—a corporate interest can be thought to represent the motivations of third parties. This question of symmetry between corporate and individual interests remains unanswered by courts,¹⁸ but Professor Garrett indicates the lack of congruence between Hobby Lobby's management and employee workforce must be well beyond any reasonable threshold of First Amendment tolerance. How much divergence is too much? What is the explanatory power of Garrett's effectiveness lexicon, and how does it constitute a workable test for judicial review? I suggest that the legal writing analytic of core theory serves as a useful proxy for judging subjective criteria such as awkwardness, elision, attenuation, metonymy, or coherence when arguing on behalf of essential third parties.

II. CORE THEORY: WRITING ABOUT SYMMETRY

I offer a rare example of cross-fertilization from discourse to doctrine, where a didactic prism from experiential education might help bring doctrinal clarity for "podium" professors. Legal writing pedagogy is centered in the

12 Cf. Zack Behrens, *Cat Declawing: Now Banned in Los Angeles*, LAIST (Nov. 17, 2009, 10:29 AM), http://laist.com/2009/11/17/cat_declawing_now_banned_in_los_ang.php [<https://perma.cc/2GM7-WJ9R>] (noting that Los Angeles has joined several other municipalities in banning cat declawing).

13 Cf. Dane E. Johnson, *Statute of Anne-imals: Should Copyright Protect Sentient Nonhuman Creators?*, 15 ANIMAL L. 15, 37 (2008) (describing a nonprofit that seeks to promote the sale of elephant paintings as an alternative source of income to care for the animals).

14 LIONEL TIGER & MICHAEL MCGUIRE, *GOD'S BRAIN* 101 (2010) (asking the eternal question: "Is Religion Monkey Business?").

15 See generally F. Patrick Hubbard, "Do Androids Dream?": *Personhood and Intelligent Artifacts*, 83 TEMP. L. REV. 405 (2011).

16 See generally Ori J. Herstein, *The Identity and (Legal) Rights of Future Generations*, 77 GEO. WASH. L. REV. 1173 (2009).

17 See Garrett, *supra* note 1, at 121 ("The analysis implies that a corporation or organization can effectively assert the interests of its members or constituents.").

18 See *id.* at 160 ("A clearer standard should be developed, focusing on whether the substantive constitutional right can be adequately and effectively litigated by the association.").

constellation of discursive, linguistic, and rhetorical studies as it relates to law. One core element of brief-writing pedagogy is that the student lawyer should imbue a sense of Aristotelian pathos into the arc of her legal narrative. Although dismissed as a form of cloying heartstring-tugging by the ancients (and thus inferior to “logical” or “ethical” forms of argument), today the literature on “core theory” (theory of a case) emphasizes the need for counsel to articulate a pervasive, resonant theme that underscores the “emotional justification for the legal analysis.”¹⁹ Core theory should integrate the factual story and legal argument into a coherent, client-centric whole.

One quick rejoinder: do contained, discrete “stories” exist *out there*? Alan Dershowitz is cited for his nihilistic meditation that meaningless things happen all the time; that most human events are random, contingent and purposeless.²⁰ It is epistemologically unfair to construct coherent narratives based on the insular, disjointed data points of life. However, lawyers are an opportunistic bunch and are encouraged to take advantage of any possible plot points to build a compelling case. For example, humans suffer from “loss aversion”—e.g., we are more affected when someone tells us there is a 30% chance of failure rather than a 70% chance of success.²¹ If your client is sympathetic, then experiment with a negative vocabulary to bring attention to their plight. If your client is Holmes’s “bad man” toeing the line of illegality, then employ a generic lexicon and discuss pertinent policy issues or the precedential implications of your case.

Central to core theory is that the audience or reader comes to recognize the contested legal issue from the client’s point of view.²² Like any effective narrative, the brief writer should create an element of psychological “transportation,” allowing the reader to step inside the shoes of the client.²³ And thus the impenetrable koan facing the animal advocate—how to develop a theory of the case *from the perspective of a non-human*?²⁴

This is surely a psychedelic experiment beyond the ken of even the most enlightened Zen master. But this ambition to think as an animal is not merely academic—it obfuscates and compounds problems in animal law. Cass Sunstein signaled this intellectual dishonesty in how animals apply for legal

19 Mary Ann Becker, *What Is Your Favorite Book?: Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575, 580-81 (2011).

20 Alan M. Dershowitz, *Life Is Not a Dramatic Narrative*, in *LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 99, 100 (Peter Brooks & Paul Gewirtz eds., 1996).

21 Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305, 320-21 (2010).

22 See Becker, *supra* note 19, at 580 (“To develop a theme in a brief, the writer must effectively tell the client’s story, which, for the attorney, means truly adopting the client’s point of view.”).

23 *Id.* at 589.

24 See generally Thomas Nagel, *What Is It Like to Be a Bat?*, 83 PHIL. REV. 435 (1974).

standing in the United States.²⁵ Since animals cannot initiate a lawsuit, a relevant human must have an informational, competitive or aesthetic interest in an individual animal's welfare.²⁶ Should the brief writer craft a case theory centered on the actual injury suffered by the animal or should they highlight the attenuated, vicarious, "aesthetic" injury of the interested human? This schizophrenic approach to standing doctrine makes it impossible to craft an effective litigation theory with respect to essential third parties (e.g., animals or, perhaps, an employee workforce).

III. WRITING ABOUT NONPERSONS

A. Corporate Third Parties

Garrett's notion of effectiveness relates to this sense of an internally coherent narrative. Interestingly, there are strong parallels in the construction of brief writing for *Hobby Lobby* and canonic animal law standing cases such as *Animal Legal Defense Fund, Inc. v. Glickman*²⁷ and *Lujan v. Defenders of Wildlife*.²⁸ In the respondent brief for *Hobby Lobby*, a veritable dream team of counsel headed by former Solicitor General Paul Clement primes the reader with a compelling factual statement of how the sincere religious convictions of the Green family inform their business practices.²⁹ There is scarce mention of the religious or irreligious constitution of the Hobby Lobby workforce. Still, the authors are forced into the awkward moment of admitting a lack of congruence between the ownership and employee populations of the corporation. They separate the "respondent[']s object[ion] to being forced to facilitate abortion by providing abortifacients, [as] that objection does not turn on the *independent* decisions of their employees."³⁰ This point of bifurcation between management and dissident employees should break the representative basis of third party standing.

As noted by Professor Garrett, the respondent briefers elide the question of standing.³¹ It seems intuitive that if a threshold issue is barely mentioned, the legal argument must be profoundly weak. Here the ambition for an inclusive core theory is not as awkward as in the animal context; it is simply absent and negated. Employee identity is erased from the narrative arc of this

²⁵ See generally Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000).

²⁶ *Id.* at 1343-52.

²⁷ 154 F.3d 426 (D.C. Cir. 1998).

²⁸ 504 U.S. 555 (1992).

²⁹ Brief for Respondents, *supra* note 6, at 7-10.

³⁰ *Id.* at 15 (emphasis added).

³¹ Garrett, *supra* note 1, at 142.

legal story. Non-evangelical workers are de-personalized into the generic mathematic of “independent” decisionmakers, as their personal religious views are reduced to a thing-like, obstinate zero.³²

The strategic choices of the briefers inform the Court’s opinion. Justice Alito frontloads his opinion in Section II with a description of the belief system of the Hahn and Green families.³³ But the employees are non-parties, and their beliefs are not represented. Justice Ginsburg’s dissent provides human content to these “third party” workers and their “dependents” by articulating their matrix of home and economic choices that depend on the availability of contraception.³⁴ However, the majority and respondents must maintain the mathematical unity of their core theory by writing off these third parties as *nonpersons* without distinguishable religious preferences.

B. *Animals, Plane Tickets, and the Art of Humane Treatment*

In the analogue canon of animal standing cases the narrative coherence of the brief becomes complicated as counsel must defer to a messy standing doctrine. Indeed, many commentators have critiqued standing doctrine, as applied to animal cases, as odd and confused.³⁵ Animals lack legal personhood. Thus, in the vast majority of civil animal cases, there must be a relevant human who has a legal interest in an animal or group of animals. Like all standing cases, there must be an (1) injury in fact (2) caused by the defendant party that is (3) capable of government redress. In addition, there are prudential judge-made discretionary requirements that (a) the injury be within the zone of interests of the statute and that (b) the injury not be broadly felt. There must be some distinctive injury to the plaintiff.³⁶

In *Lujan*, the case for standing turned on the definiteness of the intent of a group of scientist–activists to visit endangered Asian elephants.³⁷ The government briefs make scarce mention of what should be the central characters of this story—the endangered animals.³⁸ The organization’s brief does briefly mention the aggregate populations of elephants and other animals that may be affected by the proposed regulation,³⁹ but the dispositive fact in both the appellate briefs and the judicial opinion is whether these

32 See generally BARBARA JOHNSON, PERSONS AND THINGS (2008).

33 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2764–66 (2014).

34 *Id.* at 2787–89 (Ginsburg, J., dissenting).

35 Others claim standing doctrine itself is inherently malleable. See generally Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 N.C. L. REV. 1741, 1758 (1999).

36 *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 431 (D.C. Cir. 1998).

37 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562–63 (1992).

38 See, e.g., Brief for the Petitioner, *Lujan*, 504 U.S. 555 (No. 90-1424), 1991 WL 577003.

39 Brief for the Respondents, *Lujan*, 504 U.S. 555 (No. 90-1424), 1991 WL 577004, at *21-23.

interested scientists had committed to buying a plane ticket.⁴⁰ Justice Kennedy even notes that whether or not the scientists plan to return is remarkably “trivial” to the actual substance of the case and whether the numbers of these endangered species might be reduced.⁴¹ The lack of animal personhood or standing minimized any possibility of crafting a coherent core theory that “effectively” litigated these animals’ rights to life or bodily integrity.⁴²

Glickman cut the other way. The D.C. Circuit found that toothless USDA regulations subverted the plaintiff’s “aesthetic” interest in observing humanely cared-for primates.⁴³ The dissent commented on the lexical capaciousness of this attenuated dynamic that linked animal welfare and human aesthetics to the humane treatment of animals. Judge Sentelle responds that

[h]umaneness, like beauty, is in the eye of the beholder: one’s individual judgment about what is or is not humane depends on one’s personal notions of compassion and sympathy. I find it difficult to imagine a more subjective concept than this.⁴⁴

Judgment of animal or environmental degradation depends on the personal history of the observer.⁴⁵ Someone from India might have much different expectations of what a cow should look like as compared to someone from Texas. An animal lover might have a much different appreciation of how a zoo should care for a primate. This malleability of individual aesthetic preferences is troubling. For example, Ringling Brothers made headlines for ending its use of elephants.⁴⁶ An ugly detail from that litigation is that the plaintiff elephant trainer was paid \$190,000 by animal rights organizations to

⁴⁰ See *Lujan*, 504 U.S. at 563 (following the lower court in “focus[ing] on the affidavits of two [] members” who wished to visit the animals to analyze the injury in fact requirement).

⁴¹ *Id.* at 579 (Kennedy, J., concurring in part).

⁴² An example of this attenuation can be seen in the Defenders of Wildlife’s brief, where the authors comment on the probability of the probability of something happening to something else. “Defenders’ members have testified that they will be harmed by the increased risk of extinction to these species absent consultation.” Brief for the Respondents, *supra* note 39, at *15.

⁴³ *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 445 (D.C. Cir. 1998)

⁴⁴ *Id.* at 448 (Sentelle, J., dissenting); see also Danny Lutz, *Harming the Tinkerer: The Case for Aligning Standing and Preliminary Injunction Analysis in the Endangered Species Act*, 20 ANIMAL L. 311, 320 (2014) (commenting that aesthetics are more commonly equated with notions of beauty or ugliness).

⁴⁵ See Robert J. Pushaw, Jr., *Limiting Article III Standing to “Accidental” Plaintiffs: Lessons from Environmental and Animal Law Cases*, 45 GA. L. REV. 1, 50 (2010) (arguing that aesthetics in the standing context is “a matter of personal taste”).

⁴⁶ Natalie Prosin, *Ringling Brothers Is Finally Freeing Its Elephant Performers. It’s Not Nearly Enough.*, WASH. POST (Mar. 10, 2015), <http://www.washingtonpost.com/posteverything/wp/2015/03/10/ringling-brothers-is-finally-freeing-its-elfphant-performers-its-not-nearly-enough/>.

contrive these humane-aesthetic feelings for standing purposes.⁴⁷ Subjective feelings can be bought off.

IV. PERSONHOOD AND ANIMALS

The trending *Nonhuman Rights Project* case from upstate New York reflects Professor Garrett's intuition that courts have generally resisted articulating a theory of personhood for non-natural persons.⁴⁸ In that case, vanguard animal lawyer Steven Wise brought a petition for habeas corpus for Tommy (a chimpanzee) to be removed from a private residence to an animal sanctuary.⁴⁹ Personhood is intimately tied to standing, as generally only legal persons can sue or be sued. Only rarely do animals earn standing for themselves. For example, the Hawai'iian bird that "winged" itself into court in *Palila v. Hawaii Department of Land & Natural Resources* (with human co-plaintiffs).⁵⁰

The negligible judicial conversation on the topic of non-natural personhood made it easier for the New York appellate court to put forward a narrow, selective vision of rights jurisprudence. Although there is a rich literature of both deontological and utilitarian justifications for animal personhood, the court cites wholly to Pepperdine Professor Richard Cupp's social contract conception of "rights" being paired with social "responsibilities."⁵¹ The court generalizes humankind into an aggregate mass: "it is undeniable that, *collectively*, human beings possess the unique ability to bear legal responsibility."⁵² Perhaps animals *en masse* might also meet this responsibility test. For example, dogs work as service animals, as well as in herding, security and police work, among many other areas of industry.⁵³ By targeting the inquiry to Tommy himself Judge Peters could better argue that individual animals lack a sense of justice or duty.⁵⁴

This dearth of conversation might also represent the strategic vision of Steven Wise and other animal lawyers. At a Harvard conference a decade ago he identified the lack of "deep, bad law" on animal personhood as a tactical tool.⁵⁵ The programmatic sense of animal law litigation might betray at least one scholar's call that fortuity or accident be the motivating test for whether

⁴⁷ Pushaw, *supra* note 45, at 7.

⁴⁸ *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 998 N.Y.S.2d 248 (App. Div. 2014).

⁴⁹ *Id.* at 248.

⁵⁰ Sunstein, *supra* note 25, at 1359 (citing 852 F.2d 1106 (9th Cir. 1988)).

⁵¹ *Nonhuman Rights Project*, 998 N.Y.S.2d at 250.

⁵² *Id.* at 251 n.3 (emphasis added).

⁵³ *E.g.*, *Working Dogs*, WIKIPEDIA, http://en.wikipedia.org/wiki/Working_dog [https://perma.cc/KD5Y-VB4H] (last visited Mar. 10, 2015).

⁵⁴ *But see generally* MARC BEKOFF & JESSICA PIERCE, *WILD JUSTICE: THE MORAL LIVES OF ANIMALS* (2009).

⁵⁵ Steven Wise, Remarks, *The Evolving Legal Status of Chimpanzees*, 9 *ANIMAL L.* 1, 89 (2003).

a case or controversy exists.⁵⁶ But do notions of fortuity even map onto the lives of animals?

V. COHERENCE AND PRUDENCE

Professor Garrett argues for coherence in standing and non-natural legal personhood. However, in regards to animals, a motivating tension is that arguably the most “conceivable” right for animals is likely to be the most “consequential.” The recent *Nonhuman Rights Project* opinion reflects a teleological feeling that granting 14th Amendment personhood (and concomitant rights to life, liberty, and bodily integrity) to animals would—among other transformative things—destroy the meat industry (and to the chagrin of many individuals in the pro-animal rights camp, perhaps the pet industry as well).

I, therefore, share Cass Sunstein’s prescription that Congress confer standing to animals in specified contexts and that citizen-suit provisions be created that provide the ability of humans to *stand in* for animals.⁵⁷ The development of this kind of animal guardian law would help cohere the core theory-related schizophrenia that currently subverts the possibility for “effective” third party litigation in civil animal cases. Surrogate standing should also help achieve an animating first principle of standing doctrine, that there be a real “case or controversy” where fierce advocates provide full information so that judges can craft high-quality opinions. It makes intuitive sense that organizations such as the Animal Legal Defense Fund or PETA, whose *raison d’être* is to serve animals, should be tireless advocates. This goes to Garrett’s consequential approach to standing—that non-natural persons be granted standing when it facilitates justice, broadly defined.⁵⁸ Surrogate standing should eliminate the awkwardness and elision of brief writing about animals so judges can focus on the substance of animal issues, rather than the trivia of interested humans.⁵⁹

Epistemological *zen* problems may remain. In the Supreme Court’s “stomp porn” case, the graphic facts of Alito’s dissent (quoted from the Humane Society amicus brief) represent a *res ipsa* gestalt of extreme

⁵⁶ See generally Pushaw, *supra* note 45.

⁵⁷ See also Lisa Marie Morrish, *The Elephant in the Room: Detrimental Effects of Animals’ Property Status on Standing in Animal Protection Cases*, 53 SANTA CLARA L. REV. 1127, 1151 (2013).

⁵⁸ See Garrett, *supra* note 1, at 156 (“[P]ermitting corporations to assert constitutional rights does not necessarily insulate them from government power but can flow from how they may be the direct targets of civil and criminal enforcement.”).

⁵⁹ See generally Cass R. Sunstein, *Standing and the Privatization of Public Law*, 88 COLUM. L. REV. 1432, 1439 (1988) (discussing “surrogate standing”).

cruelty.⁶⁰ But how to develop a client-centric core theory from the “best interests” of a pet in a custody case, or when determining whether to ban foie gras when it is uncertain whether geese or ducks suffer from a gag reflex? Again, discourse might inform this doctrinal area where cognitive ethology adjoins law.

Professor Garrett’s article is most useful when it is backward-looking, and gives content to an unarticulated doctrinal coherence. But his claim that courts should reconsider aberrant recent decisions might be “the camel’s nose”⁶¹ if the explanatory scope of his theory is to include quasi-persons such as animals.⁶² One might invoke the Legal Realists and simply retreat from the magic language of personhood. The Bobbitt modality of prudential argument, as typified by Alexander Bickel, could be a robust option.⁶³ Courts could simply be so “selective” as to avoid cases that ask whether animals enjoy standing, even if animal justice flows from the generalized purview of the concerned constitutional right. Still, courts of final appeal may depend on the discretion of certiorari; a trial or intermediate court cannot.

Finally, there might be a related, even more profound question for Professor Garrett: does expanding this traditionally threshold question of standing to a pragmatic “consequentialist” test put the cart before the proverbial horse, and thus defeat the driving purpose of standing altogether?

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60 *United States v. Stevens*, 559 U.S. 460, 491 (2010) (Alito, J., dissenting) (“[A] kitten, secured to the ground, watches and shrieks in pain as a woman thrusts her high-heeled shoe into its body, slams her heel into the kitten’s eye socket and mouth loudly fracturing its skull, and stomps repeatedly on the animal’s head. The kitten hemorrhages blood, screams blindly in pain, and is ultimately left dead in a moist pile of blood-soaked hair and bone.”) (quoting Brief of Amicus Curiae the Humane Society of United States in Support of Petitioner at 2, *Stevens*, 559 U.S. 491, (No. 08-769), 2009 WL 106673, at *2).

61 See PETER BENGELSDORF, *IDIOMS IN THE NEWS* (2012) (ebook) (describing “the camel’s nose in the tent” as a type of slippery slope argument—“[o]nce you let the camel get that far, it is hard to keep the whole animal from coming in”).

62 See Garrett, *supra* note 1, at 157 (urging the Court to reevaluate the standing rights of corporations).

63 See PHILIP BOBBITT, *CONSTITUTIONAL FATE* 59-73 (1982) (outlining principles of prudential argument).