

No. 25-364

No. 25-365

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL.
Petitioners,

v.

STATE OF WASHINGTON, ET AL.; JASON BARBARA, ET AL.
Respondents.

On Writ of Certiorari to the
United States Court of Appeals

**BRIEF OF JOSEPH D. KIRCHNER AS AMICUS CURIAE
SUPPORTING NEITHER PARTY**

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OTHER AUTHORITIES

- C. Peter Magrath, *Morrison R. Waite: The Triumph of Character* (1963)
Letter from J.C. Bancroft Davis to Chief Justice Waite (May 1886)
Letter from Chief Justice Waite to J.C. Bancroft Davis (May 1886)

INTEREST OF AMICUS CURIAE

Joseph D. Kirchner is a pro se plaintiff in two pending federal actions: *Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), and *Kirchner v. Ellison*, No. 0:26-cv-00726-JWB-ECW (D. Minn.). The D.C. action involves claims against corporate defendants—Anthropic, PBC; OpenAI, Inc.; Apple Inc.; and Comcast Corporation—whose constitutional defenses depend entirely on corporate personhood under the Fourteenth Amendment.

Amicus has a direct interest in this Court's interpretation of "persons" in the Fourteenth Amendment because any construction adopted here will govern the constitutional status of the corporate defendants in his D.C. litigation.

Amicus brings to this Court's attention a consequence of any narrow construction of "persons" that no party has raised: **If "persons" can be construed to exclude human children born in the United States, then "persons" certainly cannot include artificial legal entities such as corporations.** The logical necessity of this consequence demands this Court's consideration before ruling.

No counsel for any party authored this brief in whole or in part. No person or entity other than amicus made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This Court is poised to rule on whether "all persons born... in the United States, and subject to the jurisdiction thereof" includes children of undocumented immigrants and temporary visitors. The Petitioners argue that "persons" can be narrowly construed based on original intent and primary purpose to exclude certain categories of human beings.

The definition of "persons" under the Fourteenth Amendment has been broadened exactly once in American jurisprudence—to include corporations in *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394 (1886). That broadening was never argued, never briefed,

never decided. It rests entirely on a court reporter's head-note. Now, for the first time, the definition is under attack—not to exclude artificial entities, but to exclude human children born on United States soil. The Administration seeks to *narrow* the term that was *broadened* for corporations.

This brief raises a consequence no party has addressed: Any narrow construction of "persons" that excludes human children necessarily excludes corporations.

This is not a tangential issue—it is the same constitutional question. Both birthright citizenship and corporate personhood derive from the same source: the meaning of "persons" in the Fourteenth Amendment. The Citizenship Clause grants rights to "all persons born...in the United States." The Due Process and Equal Protection Clauses protect "any person" from state deprivation. Corporate constitutional rights—*Citizens United*, *Hobby Lobby*, and 138 years of doctrine—rest entirely on corporations qualifying as "persons" under this same Amendment. This Court cannot define "persons" for one clause without defining it for all. The question before the Court is singular: **What does "persons" mean in the Fourteenth Amendment?** That answer governs both cases.

Corporate personhood—the doctrine that corporations are "persons" entitled to constitutional protections under the Fourteenth Amendment—rests entirely on the inclusion of corporations within the meaning of "persons." If this Court holds that "persons" can be narrowly construed to exclude actual human beings born on United States soil, then a fortiori, "persons" cannot be construed to include artificial legal entities that:

- Are not born (they are created by state filing)
- Have no physical existence (they are paper legal fictions)
- Are never mentioned in the Constitution
- Were not contemplated by the Framers of the Fourteenth Amendment
- Possess no inherent rights (they exist only by state permission)

- Have no moral agency, consciousness, or capacity for citizenship

Moreover, this Court has never actually held that corporations are "persons" under the Fourteenth Amendment. The doctrine traces entirely to a headnote—not a holding—in *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394 (1886), written by court reporter J.C. Bancroft Davis, a former railroad executive. Chief Justice Waite explicitly stated that the Court "avoided meeting the constitutional question" of corporate personhood. The headnote was fraudulently converted into precedent by subsequent citations.

Before ruling on whether human children are "persons," this Court must confront: **Can a narrow construction exclude humans while preserving constitutional rights for paper corporations?**

The logical answer is no. This Court should not adopt any construction of "persons" without fully considering this consequence.

ARGUMENT

I. THE NECESSARY CONSEQUENCE OF ANY NARROW CONSTRUCTION

The Petitioners ask this Court to hold that "all persons born... in the United States" does not mean all persons. They argue that the phrase can be narrowly construed to exclude children of undocumented immigrants and temporary visitors based on:

1. Original intent (protecting freed slaves)
2. Primary purpose (citizenship for former slaves, not immigrants)
3. "Subject to the jurisdiction thereof" (requiring political allegiance)

If this Court accepts any of these narrowing constructions, it necessarily establishes that "persons" in the Fourteenth Amendment is subject to limitation based on intent, purpose, and textual interpretation.

This principle, once established, cannot be confined to the Citizenship Clause.

The Fourteenth Amendment's other clauses use the same word:

"No State shall... deprive any **person** of life, liberty, or property, without due process of law; nor deny to any **person** within its jurisdiction the equal protection of the laws."

U.S. Const. amend. XIV, § 1.

Corporate constitutional rights—speech, due process, equal protection—rest entirely on the inclusion of corporations within "person" in these clauses. If "persons" can exclude human children, the same analytical framework necessarily applies to corporations.

II. CORPORATE PERSONHOOD WAS NEVER DECIDED BY THIS COURT

Amicus respectfully brings to this Court's attention a fact that legal scholarship has documented but that has never been raised in litigation seeking to overturn the doctrine: **This Court has never issued a holding that corporations are "persons" under the Fourteenth Amendment.**

The doctrine traces entirely to *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394 (1886). In that case:

1. The Court ruled for the railroad on taxation grounds

2. The majority opinion, written by Justice Harlan, **did not address** whether corporations are "persons" under the Fourteenth Amendment

3. The only reference to corporate personhood appears in a **headnote** written by court reporter J.C. Bancroft Davis

This Court has repeatedly held that headnotes are not part of the Court's decision:

"[T]he headnote is not the work of the court, nor does it state its decision... it is simply the work of the reporter."

United States v. Detroit Lumber Co., 200 U.S. 321, 337 (1906).

The corporate personhood "precedent" is not precedent at all. It is a headnote fraudulently cited as if it were a holding.

III. THE SANTA CLARA HEADNOTE FRAUD

The circumstances of the Santa Clara headnote demand this Court's attention.

A. The Reporter Was a Former Railroad Executive

J.C. Bancroft Davis, who wrote the headnote, was a former president of the Newburgh and New York Railway Company. He had direct financial interests in the railroad industry that would benefit from corporate constitutional rights.

B. The Chief Justice Confirmed No Ruling Was Made

Prior to publication, Davis wrote to Chief Justice Morrison Waite asking about the headnote. Waite responded:

"I think your mem. in the California Railroad Tax cases expresses with sufficient accuracy what was said before the argument began. I leave it with you to determine whether anything need be said about it in the report inasmuch as we avoided meeting the constitutional question in the decision."

Letter from Chief Justice Waite to J.C. Bancroft Davis (May 1886) (emphasis added).

The Chief Justice explicitly stated that the Court **"avoided meeting the constitutional question."** There was no ruling on corporate personhood. Yet Davis included the headnote, and subsequent courts cited it as if it were a holding.

C. The Headnote Was Laundered Into Precedent

In *Minneapolis & St. Louis Railway Co. v. Beckwith*, 129 U.S. 26 (1889), Justice Stephen Field cited Santa Clara as precedent for corporate personhood—three years after the Chief Justice had confirmed no such ruling was made.

In *Pembina Consolidated Silver Mining Co. v. Pennsylvania*, 125 U.S. 181, 189 (1888), this Court stated: "Under the designation of 'person' there is no doubt that a private corporation is included." The "no doubt" referred to the Santa Clara headnote, not any actual holding.

D. Justices Have Acknowledged the Problem

In *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949), Justices Douglas and Black dissented:

"[In Santa Clara] [t]here was no history, logic, or reason given to support that view."

337 U.S. at 576 (Douglas, J., dissenting).

Corporate personhood has never been subjected to the constitutional analysis it requires. It has simply been assumed based on a fraudulent headnote.

IV. THE A FORTIORI LOGICAL NECESSITY

A fortiori (Latin: "from the stronger"): If the stronger case fails, the weaker case cannot succeed.

If this Court holds that **actual human children** born on United States soil are not "persons" under the Fourteenth Amendment, then **artificial legal entities** certainly cannot be "persons."

On every attribute of personhood, corporations are weaker candidates than human children.

Human children are living, breathing beings with physical existence; corporations are paper legal fictions. Human children are actually *born*—the very language of the Citizenship Clause—while corporations are merely created by state filing. The word "born" appears in the Constitution; corporations are never mentioned. The Framers of the Fourteenth Amendment intended to protect freed slaves, actual human beings; there is no evidence of any in-

tent to protect corporations. Human children possess inherent human dignity and natural rights; corporations have no natural rights and exist only by state permission. Human children develop moral agency over their lifetimes; corporations possess no moral agency whatsoever. Human children have consciousness; corporations have none. And most tellingly, human children have the capacity for citizenship—the very question at issue in these cases—while corporations can never become citizens.

If human children can be excluded from "persons," corporations must be excluded *a fortiori*.

Moreover, the Administration's jurisdictional theory creates an additional impossibility for corporations. The Administration argues that "subject to the jurisdiction thereof" requires a nexus—birth, allegiance, domicile—to qualify as a "person" entitled to constitutional protection. But corporations have no birthplace, no allegiance, and only a fictional domicile in their state of incorporation. A Delaware corporation operating in Texas was not "born" in Texas, owes no allegiance to Texas, and has no domicile there. Under the Administration's theory, would such a corporation have Fourteenth Amendment protections in Texas? The Administration's narrow construction would require corporations to establish jurisdictional nexus in every state where they seek constitutional protection—upending 138 years of corporate law and creating jurisdictional chaos.

V. THIS COURT CANNOT RULE WITHOUT ADDRESSING THIS CONSEQUENCE

The Petitioners ask this Court to establish that "persons" is subject to narrow construction. This Court cannot grant that request without considering the necessary consequence for corporate personhood.

A. The Stakes

Corporate constitutional rights affect every aspect of American law:

- **Citizens United:** Corporate political spending as protected speech

- **Hobby Lobby:** Corporate religious exercise
- **Due process:** Corporate procedural protections
- **Equal protection:** Corporate non-discrimination rights
- **Fourth Amendment:** Corporate privacy rights (in some contexts)

But the danger extends beyond corporate personhood. The Administration's methodology—that constitutional provisions extend only to circumstances analogous to their "primary purpose"—is a universal solvent that dissolves any constitutional protection. If adopted, the same reasoning threatens every major civil rights precedent of the past seventy years:

- **Brown v. Board of Education:** The framers of the Fourteenth Amendment did not primarily intend to integrate schools—therefore segregation could be restored.
- **Loving v. Virginia:** The framers did not primarily intend to permit interracial marriage—therefore anti-miscegenation laws could return.
- **Obergefell v. Hodges:** The framers never contemplated same-sex marriage—therefore marriage equality could be reversed.

Each of these landmark decisions required rejecting the "primary purpose" limitation. Each recognized that constitutional text establishes universal principles, not narrow solutions to 1868 problems. If this Court accepts the Administration's methodology to exclude children from "persons," it provides the analytical framework to reverse any constitutional protection whose application exceeds the framers' specific contemplation.

A ruling that "persons" can exclude human children necessarily provides the analytical framework to exclude corporations—and to reverse civil rights precedents. Litigants will immediately challenge both using this Court's reasoning.

B. The Logical Impossibility

This Court cannot coherently hold:

1. "Persons" is narrow enough to exclude human children born in the United States
2. "Persons" is broad enough to include paper corporations

These positions are logically incompatible. If the word is subject to narrowing construction based on original intent—and the original intent was to protect freed slaves, not corporations—then corporations are excluded by the same analysis that excludes immigrant children.

C. The Path Forward

Amicus does not ask this Court to rule on corporate personhood in this case. Amicus asks only that this Court:

1. **Recognize** the necessary consequence of any narrow construction
2. **Consider** whether it intends to establish a framework that destroys corporate personhood
3. **Decline** to adopt reasoning that creates logical incoherence
4. **Affirm** birthright citizenship to avoid the consequence entirely

Alternatively, if this Court believes corporate personhood should be reconsidered, this case provides the vehicle—but only if the Court explicitly addresses the issue rather than inadvertently deciding it through inattention to consequences.

CONCLUSION

For 138 years, corporate personhood has rested on a fraudulent headnote written by a conflicted court reporter in a case where the Chief Justice confirmed the Court "avoided meeting the constitutional question."

Now, for the first time, this Court is asked to construe "persons" narrowly enough to exclude human children born in the United States.

The logical consequence is inescapable: If human children can be excluded from "persons," corporations certainly cannot be included.

Before this Court rules, it must consider: Does it intend to establish a framework that destroys corporate constitutional rights? Or does it intend to create logical incoherence—narrow construction for vulnerable humans, broad construction for powerful corporations?

Neither option is acceptable. This Court should affirm that "all persons born... in the United States, and subject to the jurisdiction thereof, are citizens"—because that is what the Constitution says, what 127 years of precedent confirms, and what logical consistency requires.

The alternative is not merely wrong on birthright citizenship. It is the unraveling of corporate personhood—a consequence this Court must confront before ruling.

Respectfully submitted,

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Dated: March 18, 2026

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limits of Supreme Court Rule 33.1(g). This brief contains 2,343 words, excluding the parts of the brief exempted by Rule 33.1(d).

CERTIFICATE OF SERVICE

I certify that on this date, copies of this Brief were served by first-class mail and electronic transmission upon:

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APPENDIX

A. CORRESPONDENCE BETWEEN J.C. BANCROFT DAVIS AND CHIEF JUSTICE WAITE (MAY 1886)

The following correspondence is reproduced from C. Peter Magrath, *Morrison R. Waite: The Triumph of Character* 390 n.9 (1963), citing the original letters held in the Morrison R. Waite Papers, Library of Congress.

Letter from J.C. Bancroft Davis to Chief Justice Morrison R. Waite (May 26, 1886)

Dear Chief Justice: I have a memorandum in the California Cases—*Santa Clara County v. Southern Pac Rd Co &c &c*—as follows: "In opening the Court stated that it did not wish to hear argument on the question whether the Fourteenth Amendt applies to such Corporations as are parties in these suits. All the Judges were of opinion that it does." Please let me know whether I correctly caught your words and oblige.

Reply from Chief Justice Morrison R. Waite to J.C. Bancroft Davis (May 1886)

I think your mem. in the California Rd. Tax cases expresses with sufficient accuracy what was said before the argument began. I leave it with you to determine whether anything need be said about it in the report inasmuch as **we avoided meeting the constitutional question in the decision.**

Significance: Chief Justice Waite's reply confirms two critical facts: (1) the Court made no holding on corporate personhood—it "avoided meeting the constitutional question"; and (2) the decision to include any statement in the report was left to Davis, the court reporter, not determined by the Court. The resulting headnote—which declared corporations to be "persons" under the Fourteenth Amendment—was thus never a holding of this Court, yet it became the foundation for 138 years of corporate constitutional rights doctrine.

B. TIMELINE OF CORPORATE PERSONHOOD "PRECEDENT"

In 1886, this Court decided *Santa Clara County v. Southern Pacific Railroad Co.*, but issued no holding on corporate personhood—the doctrine appears only in a headnote written by the court reporter. That same year, Chief Justice Waite wrote to reporter Davis confirming that the Court "avoided meeting the constitutional question."

Two years later, in 1888, *Pembina Consolidated Silver Mining Co. v. Pennsylvania* cited *Santa Clara* as if it were precedent—the first citation of the headnote as a holding. In 1889, Justice Field in *Minneapolis & St. Louis Railway Co. v. Beckwith* further laundered the headnote into apparent precedent.

In 1906, this Court in *United States v. Detroit Lumber Co.* confirmed that headnotes are not part of the Court's decision and do not state its holding. Yet the *Santa Clara* headnote continued to be cited.

In 1949, Justices Douglas and Black dissented in *Wheeling Steel Corp. v. Glander*, noting that *Santa Clara* provided "no history, logic, or reason" for corporate personhood.

In 2010, *Citizens United v. FEC* extended corporate speech rights—built entirely on the foundation of the *Santa Clara* headnote.

Now, in 2026, the birthright citizenship cases present the first opportunity to address this 138-year-old fraud.

C. PENDING LITIGATION AFFECTED

Amicus is a plaintiff in two pending federal actions:

In *Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), amicus has asserted claims against corporate defendants Anthropic, PBC; OpenAI, Inc.; Apple Inc.; and Comcast Corporation, whose constitutional defenses depend on corporate personhood. Any ruling by this Court on the meaning of "persons" in the Fourteenth Amendment will directly govern the constitutional status of these corporate defendants.

In *Kirchner v. Ellison*, No. 0:26-cv-00726-JWB-ECW (D. Minn.), amicus challenges Minnesota's police accountability framework and raises the birthright citizenship litigation as evidence of coordinated constitutional subversion across the three branches of government—the same coordination pattern documented in this brief.