

1 Derek St.Pierre
 2 1884 Market Street
 3 San Francisco, California 94102
 4 (415) 701-0247
 5 fax: (415) 864-6687
 6 on behalf of:

7
 8 In Defense of Animals
 9

10
 11
 12 STATE OF VERMONT
 13 CHITTENDEN COUNTY, SS.

14
 15)
 16 IN RE ESTATE OF)
 17 HOWARD BRAND) CHITTENDEN PROBATE COURT
 18 LATE OF ESSEX JUNCTION)
 19 VERMONT) DOCKET NO. 28473
 20

21
 22 AMICUS CURIAE BRIEF
 23

24
 25 I. INTERESTS OF THE *AMICUS CURIAE*
 26

27 *Amicus Curiae* seeks to place the probate case before the court in the larger
 28 national context, as well as shed light on the social and historical grounding of the law in
 29 this area.¹ Property concepts are about social relations, continue to evolve, and cannot be
 30 considered absent their social grounding. *In re Estate of Howard Brand* deals with a
 31 unique type of personal property, living sentient beings.
 32

33 *Amicus Curiae* In Defense of Animals ("IDA") is a leading, national, non-profit
 34 organization dedicated to ending the institutionalized exploitation and abuse of animals.
 35 IDA is one of the largest animal advocacy organizations in the United States and has more
 36 than 70,000 members. IDA addresses this court on behalf of the non-human animals² that
 37 are the subject of this proceeding, as well as those similarly situated in probate
 38 proceedings.
 39
 40

¹ Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, their members, or their counsel made a monetary contribution to the preparation and submission of this brief.

² The term "non-human" is used to describe "animal" in order to accentuate the artificial nature of the human-animal dualism pervasive in our language. Humans are animals.

II. INTRODUCTION AND BACKGROUND

This is a capital case. The lives of the descendant's four horses and a mule hang in the balance. Although the discussion regarding the future of these animals occurs within the realm of property law, the unique type of "property" involved merits special attention.

The study of property is the study of social relations. Property rights are significant in their ability to create expectations of specific treatment in social dealings with others. The Anglo-American concept of property creates an artificial legal dualism with two types of entities: persons and property.³ This division between the concepts of "people" and "property" is not as logical as it appears. Inanimate objects sometimes fall into the category of people,⁴ and living beings can find themselves in the category of property.⁵ Non-human animals are currently categorized as personal property.⁶ Despite this categorization, observation and logic illustrate the unique quality of this living, breathing property in comparison to most other forms of inanimate property.

Property law must be understood and viewed within its historical context. Not long ago, the concept of property included various classes of humans. In the Seventeenth century, Africans brought into the United States were bought and sold as chattel.⁷ During this same period, women, once married, became the property of their husbands.⁸ Possibly the biggest barrier to the exertion of rights by either group was their status as property. By definition, this categorization relegated both slaves and married women to a position with few legally cognizable rights.

The current position of non-human animals in our society is rooted in this long history of subjugation and domination by humans over humans.⁹ Science, theology, and social myths have all played a part in establishing modern relationships between humans and non-human animals. In this country, the transition of slaves and married women from property to people came through a change in perspective away from a focus on the differences that separated the dominant from the subservient groups.¹⁰ As the rationale to support subjugation lost its significance, the groups at issue gained ever widening protection by the law.

³ Gary Francione, *Animal Rights and Animal Welfare*, 48 RUTGERS L. REV. 397, 434 (1996).

⁴ Corporations and ships are considered people for purposes of the law and can sue or be sued.

⁵ DAVID S. FAVRE & MURRAY LORING, 1 ANIMAL LAW 21 (1983). See also GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW at 35 (1995).

⁶ GARY L. FRANCIONE, ANIMALS, PROPERTY AND THE LAW 34-35 (1995).

⁷ William M. Wiecek, *The origins of the Law of Slavery in British North America*, 17 CARDOZO L. REV. 1711, 1779 (1996).

⁸ WINSTON E. LANGLEY & VIVIAN C. FOX, WOMEN'S RIGHTS IN THE UNITED STATES 7 (1994).

⁹ Steven Wise, *How Nonhuman Animals Were Trapped in a Nonexistent Universe*, 1 ANIMAL L 15 (1995).

¹⁰ See Derek W. St. Pierre, *The Transition From Property to People: The Road to the Recognition of Rights for Non-Human Animals*, 9:2 HASTINGS WOMEN'S L.J. 255 (Summer 1998).

1 The situation of non-human animals, although not identical, is analogous to that
2 formerly occupied by slaves and married women. Humans do not possess any
3 characteristics which are not shared by at least one other species. Non-human animals use
4 tools, communicate with language, display emotions, have social relations, establish
5 cultures, display rational thought, and even exhibit altruism. The converse is also true.
6 There are no shortcomings displayed by non-human animals that are not also reflected in
7 human behavior.

8
9 Clearly, the case before the court deals with a more difficult situation with lives
10 hanging in the balance than providing disposition of other "personal property."

11
12
13 III. RATIONALE FOR DENIAL OF EXECUTION OF CODICIL FOR THE
14 DESTRUCTION OF DESCENDANT'S ANIMALS

15
16 The role of the court in cases involving wills and trusts is to determine and
17 effectuate testator's intent, unless it is contrary to the law or public policy. Both the law
18 and public policy are socially defined concepts, subject to evolution. In the case before
19 the court, the executor of an estate is attempting to execute five animals in compliance
20 with his client's will. Allowing the executor to do so is in fact in direct violation of public
21 policy.

22
23 The conclusions of a similarly situated court, *In Re Capers Estate* 34 D. & C. 2d
24 121 (Orphan's Ct., Pa 1964), are particularly enlightening and are reproduced below:

25
26 There is no question of the strength of the public sentiment in favor of preserving
27 the lives of these animals. This is in accord with the upward development of the
28 human instinct in mankind for the preservation of life of all kinds, not only of
29 human life but of the life of the lesser species. Man has come to realize that he
30 has an ethical duty to preserve all life, human or not, unless the destruction of
31 such other relief is an absolute necessity.

32
33 If affirmation of life and ethics are inseparably combined, it indeed would be
34 unethical to carry out the literal provisions of paragraph five of the descendant's
35 will. Paragraph 5 of descendant's will would confiscate the life of the two [Irish]
36 setters for no purpose. It would be an act of cruelty that is not sanctioned by the
37 traditions and purposes of this court, and would conflict with its established
38 public policy.

39
40 As the Pennsylvania court articulates so well, the court serves an important role in
41 reflecting the values of an ever changing society and to continue to build on the traditions
42 and rationale of the law under which we live.

43
44
45

1 States regulate the use of and interaction with animals through anti-cruelty
2 statutes. Increasingly, states are viewing cruelty towards animals as a serious offense
3 against society.¹¹ Many states now recognize the crime of animal cruelty as a felony
4 offense.¹² Vermont punishes repeat offenders as well as those committing "aggravated"
5 cruelty against animals with felony incarceration.¹³ The escalating severity with which
6 animal cruelty is being punished is a reflection of both the degree of seriousness that our
7 society views such conduct, as well as a reflection of the importance of that which is being
8 protected.

¹¹ All 50 states have anti-cruelty statutes. For summaries of those statutes see Henry Cohen, *State Statutes Prohibiting Cruelty to Animals*, Congressional Research Service, The Library of Congress (1992). The language of California Penal Code § 597 is fairly representative, although the potential penalties are stiffer than most. It states:

[E]very person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animals to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars.

CAL. PENAL CODE § 597 (b) (West 1998).

¹² The states who punish animal cruelty as a felony include California, Delaware, Florida, Louisiana, Maine, Michigan, Missouri, Montana, New Hampshire, Oklahoma, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin.

¹³ Vermont punishes cruelty to animals with up to a year in prison for first offenses, and up to two years for repeat offenses. Aggravated cruelty to animals is punishable for up to three years, and up to five years for repeat offenses. 13 V.S.A. § 353 (1997).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

IV. CONCLUSION

The existence and proliferation of horses predates domestication. It would be an anthropocentric perspective to assume that a nonhuman animals desire to live dies with her or his "owner." Our social history and cultural development illustrate an increasing understanding of this concept and of the rights of non-human animals. Public policy and our country's law should operate to allow these animals the opportunity to continue living.

Respectfully submitted,

Derek St.Pierre, Esq.
1884 Market Street
San Francisco, California 94102
(415) 701-0247

on behalf of:

In Defense of Animals
131 Camino Alto, Suite F
Mill Valley, California 94941
(415) 388-9641

cc: Alan Bjerke, Esquire
Thomas E. McCormick, Esquire

