

Corporate Privacy

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Elizabeth Pollman, *A Corporate Right to Privacy*, 99 **Minn. L. Rev.** (forthcoming, 2014) available at [SSRN](#).

Professor [Elizabeth Pollman](#) explores the validity and scope of a constitutional right to privacy for corporations in a thought-provoking forthcoming article, [A Corporate Right to Privacy](#). In light of the discussions and debates about the rights of corporations surrounding the Supreme Court's recent *Hobby Lobby* decision, the article provides an insightful perspective for thinking about the rights and limitations of constitutional protections for corporations, in particular those relating to the right to privacy.

The article is methodically structured and carefully presented for the reader. Pollman states her measured, core argument early in the article:

This Article argues that corporations hold rights derivatively, to vindicate the rights of natural persons associated with or affected by the corporation. Accordingly, most corporations in most circumstances should not have a constitutional right to privacy....Yet because corporations are not monolithic, but rather exist along an associational spectrum, this Article also highlights that some nonprofit and private corporations could present a stronger claim given their varying purposes and dynamics, particularly in social, political, and religious realms.

Pollman, then, deftly reviews decades of federal and state law relating to corporate privacy, explains her derivative approach for adjudicating corporate constitutional rights, and closes by applying that derivative approach to the right to privacy. The writing in the article is lucid, and the analysis is nuanced. The article recognizes the complexities and sensitivities of examining issues at the intersection of privacy and corporations. It avoids bold pronouncements and omniscient schemes by being mindful of the diversity of considerations relating to privacy and corporations.

In reading the article, one would likely find much of her core argument persuasive, and hints of the beginnings of new lines of inquiries. *How does one systemically consider corporate privacy protections when the derivative rights are unclear, or in partial conflict and competition with the direct rights of some corporate stakeholders? What happens when corporations are used as alternative means towards constitutional protections that may otherwise not be as easily accessible? How would the derivative approach to corporate rights work in connection with other constitutional rights relating to corporations? Is the derivative approach stronger and more relevant for some constitutional protections relative to others?* The seeds of more complete answers to these questions and others can likely be found in this article, and so can the seeds to related new and important questions for corporate law and society in the coming years.

In reading the article, one is reminded that corporations are legal fictions used to manifest the efforts and capital of the people who constitute them; that they are as complex and diverse as the people who form them, and that many corporate constitutional protections are derived from the constitutional protections of the people behind them. As such, when one deliberates about the depth and breadth of corporate constitutional rights, as Pollman has skillfully done in her article, one is frequently deliberating about the depth and breadth of their own rights.

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