Statement to NYS Legislature in Support of Oreo's Law

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I am a professor at UCLA Law School where I teach courses on animal law and tax exempt organizations. In the fall of 1997, then State Senator Tom Hayden asked me for legal research and legislative drafting assistance for a comprehensive shelter reform bill that he would introduce to the California legislature in 1998. That law, now known as the Hayden Law, was ultimately passed with overwhelming bipartisan support and signed into law. I am writing to you on the basis of 10 years of experience with the Hayden Law and 20 years of experience working with various types of animal rescue and adoption groups, as those experiences pertain to Oreo's Law.

Among other shelter reform provisions, the Hayden Law created the right of access to shelter animals for animal rescue and adoption groups with Internal Revenue Code (IRC) section 501(c)(3) status. That aspect of the Hayden Law has had very positive effects, many of which were unanticipated at the time of enactment. I am writing to thank you for carrying similar legislation in New York, to provide you with some information about the opposition we encountered in enacting the Hayden Law, to allay some concerns about predicted unintended consequences of Oreo's Law, and to encourage you to persevere despite opposition. Oreo's Law is well worth the fight for enactment because a right of access for rescue groups is crucial to reduce unnecessary killing of animals in shelters.

When the Hayden Law was introduced, it met intense criticism from public animal control directors who perceived the law as an affront to their authority to manage animal shelters. We expected that criticism. We did not expect criticism from animal advocacy groups such as the shelter division of the Humane Society of the United States. Many of the same arguments that I hear with regard to Oreo's Law also formed the basis of strenuous opposition to Hayden's Law generally and to the right of access provision specifically. Listening to the criticisms, one would have thought that access by animal rescue and adoption groups was tantamount to handing the keys to the animal shelters to drug dealers, dog fighters, hoarders, and other animal abusers.

I think the vehemence of the opposition was related to several factors. One was defensiveness in the face of evidence that our shelters could be doing so much more to save animals' lives and to save the public the expense of killing them. Giving rescue groups the ability to take and find homes for shelter animals seemed like one of many straightforward approaches to reduce the killing in our shelters that shelter managers should be implementing on their own without the need for regulation. Indeed, one legislator asked explicitly why shelter managers would not already be engaging in such life-saving strategies simply as a matter of good shelter practices. Legislators assumed that shelter managers behaved as rational business managers who would attempt wherever possible to reduce the costs of killing.

From some respects, shelter managers were behaving rationally when they chose killing over other alternatives. California shelter budgets were calculated on the basis of killing and disposing of animal bodies and not on the basis of saving lives. This basis for establishing

shelter budgets created a perverse incentive that encouraged killing over lifesaving. Unfortunately, this problem still remains.

Shelter managers also emphasized killing because of their negative attitudes about the public, attitudes that had developed, ironically, from their own ways of doing business. To the majority of shelter managers at the time, the "public" had become one indistinguishable mass of irresponsible owners who turned in their healthy pets for trivial reasons. Their experiences with the public led shelter managers and workers to predict that there are too few truly good potential pet owners in the public to make it worth their while to emphasize adoption. Yet, it was their own hours of operation that contributed to their pessimism. Many of our shelters were not open for adoption during the hours that working people could access shelters in order to adopt. Those same shelters were open for relinquishment at virtually all hours because, they argued, not to take in animals would mean that those animals would be abandoned on the street. Thus, a self-reinforcing spiral of increasing mistrust of the public and justification for killing continued unabated.

Since most shelter managers truly believed that high levels of killing were unavoidable, they did not, on their own, seek solutions to a "problem" (i.e., the extent of killing) they did not believe existed. Moreover, shelter directors were skeptical of rescue groups' ability to do better at adoption. Since shelter managers were not seeing many viable adoptions take place in their own shelters, how is it that rescue groups could adopt out the animals they were taking from shelters? In fact, rescue groups used many creative means of making animals available for adoption, including weekend adoption shows at places people who like pets would go. Rescue groups had sufficient experience with the fostered animals that they could more effectively match pets with people, and rescue groups knew the veterinary medical history of their fosters, which is valuable information to adopters. In some cases, rescue groups provided socialization and basic training to animals so that they could be adopted. My point is that, instead of educating themselves about rescue group foster and adoption practices or improving their own shelter practices, many shelter managers developed the view that rescue groups must be hoarding the animals or adopting them out irresponsibly.

There was very little collaboration between rescue groups and shelters which would have allowed shelter managers to truly understand the dynamics of local adoption patterns. Indeed, there was little basis for a positive relationship at all. By virtue of their very name—*rescue* group—shelters perceived criticism. Animals have to be "rescued" from a "shelter"? Rescue groups' belief in the life-saving potential for animals flew in the face of everything traditional shelter managers believed about the lack of adoptability of animals and the lack of available homes. Shelter managers did not like to be criticized by rescue group members who believed that more could be done to protect and save animals, and some shelter managers reacted vindictively in the face of such criticism.

Here is just one example of vindictive treatment: A rescue group member sought to save a healthy mother cat and her four healthy kittens impounded in a local shelter. The shelter manager told her to choose one kitten and that he was going to kill the rest, including the mother, because another member of the same group had sent a critical letter about the shelter to the governmental body responsible for overseeing shelters. That manager knew the increased pain he would cause by forcing a choice rather than simply denying access to any of the kittens and their mother altogether. How does a conscientious rescuer dedicated to

saving lives choose one of four healthy kittens, knowing that the others are going to be summarily killed?

In sum, the situation before the Hayden Law was enacted was that shelter managers were resistant both to changing their own practices and to working with rescue groups to promote life-saving opportunities for animals. In addition to caring about the needless loss of animals' lives, California legislators decided that it was bad business to deny rescue groups the ability to save animals who would be killed at taxpayer expense. Legislators were convinced that shelter managers would not reach that conclusion on their own, and so, with overwhelming bipartisan support, they enacted the Hayden Law.

Right of access legislation, like Oreo's Law, breaks the self-reinforcing cycle of belief systems that undermine society's interest in saving animals' lives. It does that in a number of ways.

As anticipated, right of access legislation provided greater ability of existing rescuers to save animals at risk of killing. As to those existing rescuers and rescue groups, the greater stability of access resulted in greater success in attracting additional volunteers and donors to support the groups' mission. Imagine how difficult it was to attract volunteers psychologically hardy enough to withstand the type of encounter with a shelter manager I described earlier in this letter.

The right of access legislation also promoted expansion in the number of groups. At the time the Hayden Law was introduced, there were some rescue groups holding adoption events in some pet food/supply locations. Now, at least in Los Angeles, there are adoption events at *all* pet supply locations. Even before a new store opens, rescue groups contact store management to secure a time slot and place for adoptions. Some stores have put in permanent cat care facilities where rescued cats can be seen throughout the week. Rescue group volunteers keep the facilities clean and change the cats frequently so that a variety of cats can be shown.

Rescue groups often provide superior adoption opportunities for animals. When animals are fostered in group members' homes, those animals' preferences and personalities can be discerned such that they can be better matched with appropriate homes. Fostered cats can be trained to use scratching posts, and fostered dogs can be trained not to dig or bark inappropriately. In those and many other situations, foster care provided in homes results in more people-accommodating animals who have better retention prospects when placed in new homes.

In addition to expanding the opportunities for animal adoption, rescue groups have opportunities at adoption events to educate members of the public about various animal-related topics such as development of local dog parks or where to find low-cost spay/neuter services. Rescue group presence in pet supply stores greatly increases public access to information that can reduce relinquishment to shelters. Group members regularly provide information about solutions to common problems such as inappropriate barking or urinating.

Finally, the greater confidence rescue groups have in their continued existence to perform their mission has resulted in increased networking among groups to solve problems or share such information as good deals on pet food and supplies, experiences with veterinarians, and proposed laws that affect rescue group activity. For instance, recently members of different

cat rescue groups in California have shared information about and written letters in support of proposed laws to ban non-therapeutic declawing of cats and other animals. Those groups know firsthand the terrible consequences of cat declawing, and their input has been helpful to legislators considering bans.

Now, ten years after it went into effect, it is possible to say that the right of access provision in the Hayden Law was very important to the development of a vibrant network of animal rescue and adoption groups that function more efficiently and optimistically than they could when their ability to rescue animals from shelters was insecure. Animals have benefited directly from their life-saving activities and indirectly from the education and other services they provide.

These are all very positive features of a law that met vehement opposition while going through the legislative process. The stated bases for opposition are similar to those expressed by those who oppose Oreo's Law: the risk of hoarding of shelter animals, the risk of dogs ending up in dog fighting circles, and increased risks to the public due to irresponsible release of unsuitable dogs to adopters. Despite such dire predictions of increased incidence of public harm and cruelty to animals as a result of passing the right of access provision in the Hayden Law, there is no evidence of increased incidence of either.

As to public safety issues, it is important to point out that rescuers who provide foster care for animals can more easily and accurately assess animals' behavior than can most institutional shelter employees. Animals in foster care have a longer time to adjust than they do in shelter environments, and they can receive attention that they do not normally receive in shelter environments. Rescue groups often have among their members (or ready access to) behavior specialists who can provide better evaluation and rehabilitation options for dogs than can most shelters at this time in history. In the case of animals with true behavioral problems that make them less suitable for most adoption opportunities, rescue groups work collaboratively to seek the best possible circumstances for each animal. There is no evidence that rescue groups take undue risks by adopting out dogs that pose a safety risk. Rescue groups are well aware that doing so would risk continuity of their ability to rescue and find homes for animals. They are careful to preserve their right of access and their goodwill with the public.

As far as dog-fighting rings or hoarders go, the sad truth of the matter is that there are far too many free sources of animals to worry about the prospect of either occurring as a result of providing a right of access to IRC section 501(c)(3) animal rescue and adoption organizations. Moreover, over the past 5 years, the Internal Revenue Service has tightened the requirements for applying for 501(c)(3) status. The rules for acquiring that status are also required for continuity of the status. Such organizations must supply information about their board members and about their sources of public support. Complaints about nonprofit organizations can be filed not only with the IRS but also with the state's charitable organization enforcement division.

Besides enforcement mechanisms associated with rescue groups' status as IRC section 501(c)(3) organizations, there are also prosecutorial entities that enforce anticruelty statutes. Both dog fighting and hoarding violate those statutes. Shelter managers who suspect that animal cruelty is occurring have the ability to investigate and seek appropriate enforcement of anticruelty statutes. It is unlikely that the groups choosing to work with the shelter are among those abusing animals. Given the free and anonymous supply of animals elsewhere,

why would animal abusers make themselves known to the very agencies with enforcement powers against them?

Since shelter managers already have the power to initiate anticruelty statutory enforcement mechanisms, it is not necessary to limit access to shelter animals due to predictions that some groups will engage in cruelty. The existing legal infrastructure to address suspected acts of cruelty can be utilized if there is probable cause that such acts are occurring. Presuming likelihood to commit crimes of cruelty as a basis for denying IRC section 501(c)(3) animal rescue groups' the right of access is antithetical to American legal values that require the presumption of innocence until guilt is established.

The origin of Oreo's Law is grounded in an unfortunate series of events involving the ASPCA, which is the oldest humane society in North America, and, therefore, a well known animal protection organization. Nevertheless, Oreo's Law is important for two reasons. One is that animals deserve a chance to live if a reputable rescue group wants to provide that chance, whether or not another reputable rescue group would make the same decision. Appropriately named, Oreo's Law focuses on the animals themselves—animals who stand to lose their lives for the sad reason of an organization's unnecessary assertion of territorial ownership.

The second reason Oreo's Law is important is that it will provide benefits to animals who are held in a variety of public and private shelter settings, not just well-known nonprofit shelters like the ASPCA. If Oreo's Law is enacted, rescue groups can provide life-saving opportunities to animals in even the most poorly run shelters in the state. Oreo's Law is less about the ASPCA than it is about providing a life-affirming safety net to all animals wherever they may be sheltered in New York.