



December 1, 2009

The Honorable Micah Kellner
The Honorable Thomas K. Duane
834 Legislative Office Building
Albany, NY 12248

Re: Oreo's Law - Suggested Amendment

Dear Assembly Member Kellner and Senator Duane,

We are writing to follow up on our letter dated November 19, expressing support and gratitude for your introduction of Oreo's Law. Although we continue to support the bill as written, there have been concerns expressed by some who fear that some animals will fall into harm's way as a result of the bill as introduced—concerns which we believe can easily be addressed by the introduction of an amendment supplementing existing protections already in the bill and in other state laws.

We stand by our original belief that Oreo's Law is vital reform needed to save the lives of thousands of animals every year in New York State at no cost to taxpayers. Not only does it make no sense to kill animals who can easily be saved, but it makes no sense for taxpayers to foot the bill for killing animals in public shelters when rescue groups funded on private philanthropy—at no cost to taxpayers—are willing to pay to save them.

We not only owe it to the animals whose lives would be spared by Oreo's Law, but we also owe it to the rescuers in our movement who make a life and death difference for animals in their communities every day. Day in and day out, these rescuers show tremendous courage and compassion—visiting what is often the one place on earth hardest for them to go as animal lovers: their local shelters. And yet they go back, again and again. They endure the hostile treatment. They endure the heartbreak of seeing the animals destined for the needle. They endure having to jump through unnecessary and arbitrary hurdles set by shelter directors who are holding the animals they want to save hostage. They endure having to look the other way at abuse of other animals, because if they don't, if they speak out, they will be barred from saving any animals. And this law would make their lives easier—their work less difficult. It would empower them, tip the balance more in their favor, and lessen their daily burden. That there are those who would fail to support such a law, or worse, who would dare oppose it by claiming that these loving, dedicated, hard working rescuers are, in reality, dog fighters and hoarders in disguise is a betrayal to the animals, and a betrayal to these selfless, compassionate individuals.

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We also believe that the ten years of experience in California demonstrate the fallacy of this belief, and existing protections in New York State law against animal neglect and cruelty protect animals from hoarders and dog fighters, while ensuring that shelters do not kill animals when there is a viable rescue alternative. Nor do we believe that opposing Oreó's Law on this basis is ethical. It makes no sense to suggest that shelters should be allowed to kill *all* these animals, because *some* of them may end up in compromised situations, especially with protections in place such as laws against neglect and cruelty, and the requirement that the organizations are recognized under Section 501(c)(3) of the IRS code as an "animal rescue" or "animal adoption" agency. However, some who oppose Oreó's Law are exploiting the fear animal lovers have that some of these animals will, in fact, end up with hoarders or dog fighters and to help ensure its passage we suggest an amendment that would bar any organization that has an officer or board member who has been convicted of a statute having as its primary effect the prevention or punishment of neglect and/or cruelty or dog fighting. We also would suggest the suspension of rescue privileges during the time such charges are pending in a court of law, but not yet adjudicated.

While we continue to unequivocally support Oreó's Law without these amendments, we believe it will eliminate opposition and help ensure its passage, without sacrificing the intent of the law that these lives be saved.

Second, one commentator has suggested that the New York State law goes too far because it does not limit its reach to animals a shelter deems "adoptable." The commentator claims the California law does. However, this is a misreading of California law. The language of the New York legislation is actually identical to the California version on which it is based. According to both the legislative history of the 1998 California Animal Shelter Law, and the law's author, UCLA law professor Taimie L. Bryant,

The California version of Oreó's law did not limit rescue groups' right of access to shelter animals to only 'adoptable' and 'treatable' animals as defined in the public policy statutes of the Hayden Law. The specific statutes of the law that give rescue groups rights of access explicitly exclude from rescue groups only those animals who are irremediably suffering from a serious illness or severe injury such that immediate euthanasia is the only humane alternative.

Language about 'adoptability' and 'treatability' do appear in public policy statutes that are part of the Hayden Law. However, the purpose of those statutes is to assert the preference of the people of California for adoption and rehabilitation instead of killing shelter animals. There are no specific duties in those statutes, and they do not constrain the application of the specific statutes that provide for release to rescue groups.

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Indeed, giving the power to shelters to define "adoptable" would have devastating consequences as some shelters have very regressive and self-serving definitions of what constitutes an "adoptable" animal to justify killing. Shelters have killed animals over five years old, with minor colds, with diarrhea, or with other minor conditions, claiming they were "unadoptable." If New York State gave shelters this power as some have suggested, it would provide an arbitrary and unchecked power for shelter directors to effectively eviscerate the intent of the law to the detriment of animals who would then be put to death, even in cases where rescue groups are willing to save their lives. This is an amendment we would *not* support.

Finally, while some have chosen to focus on whether Oreo was or was not aggressive and to what extent, this has become a distraction. While Oreo's death was certainly tragic and avoidable, the law would save the lives of kittens and puppies, friendly animals, healthy animals, feral cats, as well as future Oreos. Oreo's Law, which has proven so successful in California, is a reasonable, common-sense and long overdue approach to fixing an endemic problem, even if the tragedy of Oreo's needless killing had not occurred. We continue to offer our deepest and most heartfelt gratitude for your leadership on this issue.

Very truly yours,

A handwritten signature in black ink, reading "Nathan J. Winograd". The signature is written in a cursive, flowing style with a prominent initial 'N'.

Nathan J. Winograd