

Understanding Oreo's Law

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Following the tragic killing of an abused dog by the ASPCA in New York City, despite the offer of a No Kill sanctuary to guarantee her lifetime care, two New York State legislators have introduced a bill to prevent this from happening again. Named after the dog sacrificed to expediency by the ASPCA, "Oreo's Law" would make it illegal for a shelter in New York State to kill an animal if a rescue group or No Kill shelter is willing to save that animal's life.

Modeled after a successful California law, Oreo's Law would save animals who are healthy and friendly but who shelters are threatening to kill. It will save sick, injured, or traumatized animals like Oreo in cases where No Kill shelters and rescue groups have the ability to rehabilitate them or provide lifetime care. It will save animals who a shelter claims are "aggressive" even though they are not or may be rehabilitatable. It would save feral cats at shelters which oppose TNR programs and which are determined to kill them. And it will provide a form of whistleblower protection for animal rescuers by protecting their right to continue to save animals when they expose inhumane conditions at shelters. Currently, shelters can retaliate by barring them and killing the animals they want to save if they go public with concerns.

By seeking to limit what is now the almost unrestrained power to kill animals by shelters, and because it empowers those who want to save animals from those who are threatening to kill them, Oreo's Law is central to the fight for a No Kill nation.

Who was Oreo?

Last June, a one-year old dog named Oreo was intentionally thrown off a sixth floor Brooklyn roof top by her abuser. Oreo sustained two broken legs and a fractured rib. Oreo also appears to have been beaten in the past—several of the neighbors in the building where Oreo lived reported hearing the sounds of the dog being hit. The ASPCA nursed her back to health and arrested the perpetrator. They also dubbed her the "miracle dog."

The miracle was short-lived. According to Ed Sayres, the President of the ASPCA, when Oreo recovered from her injuries, she started to show aggression. After a series of temperament tests, the ASPCA made the decision to kill her. The *New York Times* reported the story the day before Oreo's scheduled execution. Pets Alive, a sanctuary in New York, offered to take Oreo, explaining that they had experience rehabilitating dogs deemed aggressive and offering her lifetime care, including plenty of socialization and walks if the rehabilitation was not successful. They were ignored, hung up on and lied to. And the ASPCA chose to kill the dog instead. On November 13, Oreo laid dead, the victim not of her former abuser, but of an overdose of poison from a bottle marked "Fatal-Plus," at the hands of a shelter bureaucrat.

Following the furor that erupted over Oreo's killing, New York State Assembly Member Micah Zeller and Senator Tom Duane introduced a bill modeled after California to prevent animals from being killed by

shelters when there is a lifesaving alternative offered by rescue groups. “As a dog owner and a foster parent for an animal rescue group, I was heartbroken to learn that Oreo was [killed]. When a humane organization volunteers their expertise in difficult cases, a shelter should work with them to the fullest extent possible,” said Assembly Member Micah Z. Kellner. “I am hopeful that Oreo’s Law will ensure that no animal is ever put to death if there is a responsible alternative.”

The law would provide exceptions in cases of a positive rabies diagnosis and when the animal is irremediably suffering. It also requires rescue groups to be recognized as a not-for-profit under Section 501(c)(3) of the IRS code as an animal adoption agency in order to protect animals from “fly-by-night” groups and individuals. Given these protections, and the further protection of state animal cruelty laws against hoarders, Oreo’s Law has the potential to save lives, while protecting both the public and the animals from harm.

California Law

In 1998, the California legislature overwhelming and bipartisanly passed a law making it illegal for a shelter to kill a dog if a No Kill shelter or rescue group is willing to save that animal—*even in cases where the animal is a dog and the shelter claims aggression*. Ironically, when the law was introduced in the California legislature, its biggest proponent was the San Francisco SPCA, an agency which Ed Sayres, the current President of the ASPCA who made the decision to kill Oreo, would later lead. The San Francisco SPCA led the charge to enact the law because it was modeled after their own efforts to force San Francisco animal control to give them animals they were planning to kill.

It is disturbing enough that as the head of the former agency which once championed such progressive legislation prior to his arrival—an agency which experienced firsthand the intransigence and determination of their local animal control to kill animals despite the readily available lifesaving alternative being offered by the SPCA—Ed Sayres not only refused to release Oreo to a sanctuary rather than kill her, but that he has also set up his current agency in apparent opposition to such vital animal protection legislation.

Moreover, having worked at the San Francisco SPCA, the very agency that was the California law’s biggest proponent, Sayres should have been sensitive to the fact that the ASPCA, which claims a leadership position in the humane movement, should not have a more regressive policy than one approved by an overwhelming number of California politicians on both sides of the political spectrum and the State’s Republican governor a decade ago.

Spurious Opposition

Unfortunately, when the legislation was introduced in California, shelters mired in killing, afraid of public scrutiny, and unwilling to work with rescue groups opposed the measure. In addition to their desire to avoid being held accountable, their primary—though unstated—objection was that the law threatened to open up shelter killing and other atrocities to public scrutiny. As frequent visitors to the shelters, rescuers saw systemic problems and inhumane treatment of animals, but their access to animals was tenuous and many times hinged on not publicly disclosing concerns. Under the 1998 Animal Shelter Law, their right to take these animals is no longer legally premised on silence as to shelter practices and violations of the law.

According to UCLA Law Professor Taimie L. Bryant, an expert at animal law and primary author of the 1998 California Animal Shelter Law on which Oreo's Law is based,

Legislation such as Oreo's Law provides a safety net to shelter animals by providing rights of access to qualified rescue groups that can save animals' lives when public or private shelters choose not to. Public and private shelters kill animals for reasons that have nothing to do with whether the animal is suffering. If a rescue group wants to provide a life-saving solution, an animal should not be denied its benefit. Such legislation is respectful of the value of animals' lives to themselves and to those who care about them.

In addition, legislation like Oreo's Law provides rights of access to rescue groups even if a member of a group criticizes shelter practices. In California, prior to the enactment of the laws that provide rights of access to shelter animals, shelters routinely conditioned release of animals to rescue groups on those groups not criticizing shelter practices. Only after those laws were enacted did the full extent of conditioning access to animals on rescuer silence become apparent... because only then could rescue groups describe the inhumane conditions they consistently saw in shelters without fear that they would then be barred from taking animals from the shelters for rehoming.

Prior to the enactment of the 1998 California reforms, a statewide survey determined that many shelters killed animals even in cases when a qualified and legitimate rescue group or No Kill shelter offered to save them. But such situations are not unique to California; They occur frequently nationwide. This was the case in Lucas County, Ohio, when Commissioners recently heard testimony from rescuers who offered to help save dogs the local dog warden instead chose to needlessly kill. Oreo herself is a classic example of an agency willfully choosing to kill an animal in the face of a rescue alternative. In addition, rescuers in *every* community surveyed during shelter assessments from 2004-2009, with the exception of California because of the legal protection, admitted they have "looked the other way" at inhumane treatment of animals in their local shelters for fear that if they complained, they would be barred from rescuing.

Despite the opposition of shelters and their allies, it made no sense to California legislators that taxpayers were spending money on killing animals when No Kill shelters and other private rescue agencies were willing to spend their own money to save them. Legislators also found that public shelters did not reflect the humane values of their constituents. Not surprisingly, the proposed bill passed the legislature with overwhelmingly bipartisan support—ninety-six to twelve—and the state's Republican governor signed the measure into law.

Misplaced Allegiances

Given California's ten years of positive experience with similar legislation, why would some New York State and national animal protection organizations hint at their opposition to Oreo's Law? The ASPCA's alleged concerns are obviously insincere: they failed Oreo when they killed her. To have the incident memorialized forever by the name of the proposed law would be to remind animal lovers of that betrayal. As such, they are trying to confuse groups and others into opposing the law by claiming it would put animals in harm's way by opening them up to being placed in hoarding situations or with dog fighters. And sadly, some groups appear to be listening. (Sadly, many groups in California also opposed the 1998 legislation when it was introduced, although they are now quick to defend it.)

Some are supporting the ASPCA because they are financially beholden to the ASPCA or want a share in the ASPCA's largesse. It is no surprise that those organizations who receive funding from the ASPCA are either silent or supportive of the ASPCA's anti-animal position. These groups and individuals have willfully chosen to sacrifice the lives of the animals who the law would inevitably save in deference to their relationships and the almighty dollar. And so they wrap their opposition to the legislation—which is really about protecting the image of the ASPCA in spite of their untoward action toward Oreo—in fear mongering about dog fighters and animal hoarders, a fear which the California experience demonstrates is simply absurd.

According to Professor Bryant,

In the ten years since this law has been in effect in California, there have been no reports of exploitation or misuse of the right of access that rescue groups have. There has been no evidence whatsoever that the law provides easier access to shelter animals by hoarders and dog fighters. Hoarders get animals from the streets or the uncontrolled breeding of the animals they already have. There is no need to pay shelter adoption fees for the purpose of hoarding animals. Similarly, dog fighters are obtaining animals through backyard breeders who can assert the "pedigree" of the fighting dogs they produce.

By contrast, only rescue groups with the status of Internal Revenue Code section 501(c)(3) animal rescue and adoption group are allowed to take out shelter animals as a matter of right under California law. Such groups are composed of networks of individuals run by boards of directors who determine procedures for getting animals the care they need and adopted into homes. In order to qualify for an IRC section 501(c)(3) status, such groups have to provide information about their board members and operating procedures. They must also show evidence of public support for what they do. For instance, evidence of public support can be established by showing the IRS the number of volunteers they have and the extent of donations they receive. To retain their IRC section 501(c)(3) status, rescue and adoption groups must abide by the law, including anticruelty laws. Moreover, qualified rescue groups risk loss of their ability to attract volunteers, donors, and public support that keeps them in existence if they fail in their mission to protect and find good homes for the animals they take from shelters.

When the evidence is weighed, the fear that Oreo's Law will somehow put animals at increased risk is simply untrue. In fact, such laws will take animals *out* of harm's way by transferring their custody from those who are intent on killing them to those who wish to save them, as the law's namesake makes perfectly clear. Oreo's Law has the potential to save thousands upon thousands of lives. Given that the benefit is immediate and the harm speculative, opposing Oreo's Law on this basis is unethical, especially in light of the positive California experience with such legislation.

Moreover, New York State law already protects animals against hoarders and dog fighters. According to Professor Bryant:

Public animal shelters and properly authorized humane societies have the power to investigate allegations of hoarding and dog fighting. Those entities can take action that will lead to prosecution of hoarders and dog fighters under the anticruelty laws of the state. Because these entities already have anticruelty enforcement powers, it is literally over-kill to give them additional power to prevent qualified rescue groups from taking out shelter animals on the theory that some percentage of such groups might be holding too many animals or turning them

over for dog fighting. The shelters know who group members are and can initiate investigations if there is probable cause to believe that hoarding or dog-fighting is taking place as a result of a groups' access to shelter animals. It is easier and lower risk for hoarders and dog fighters to obtain animals from sources other than shelters.

Another dubious claim by the ASPCA and its allies to prevent Oreo's Law from being enacted is that the law's failure to allow shelters to screen for what they deem to be "aggression" will result in aggressive dogs being adopted to an unwilling public or being forced to live in isolation in sanctuaries. But this argument is a smokescreen, a continuation of the claim that No Kill threatens public safety and leads to warehousing.

As indicated in the book, *Redemption*,

By denigrating the movement to end shelter killing as akin to warehousing and abuse, and by ignoring the protocols of shelters which have truly achieved No Kill, these naysayers embrace a nation of shelters grounded in killing—a defeatist mentality, inherently unethical and antithetical to animal welfare. To imply that No Kill means warehousing, therefore, is a cynicism which has only one purpose: to defend those who fail to save lives from public criticism and public accountability by painting a picture of the alternative as even darker.

Moreover, according to Professor Bryant,

There is an underlying mistrust of rescue groups as qualified to make responsible decisions about animals, as though such groups have less regard for people. But there is no evidence that such groups have less regard for public health and safety or are inclined to make irresponsible decisions about animals. Because of their life-saving missions, many rescue groups have qualified animal behaviorists on staff or within easy access so that good evaluations and good care can be obtained. Many shelters lack that access and, therefore, make far worse decisions about animals' behavior than do rescue groups.

Indeed, shelters often claim dogs are aggressive for the same reason they claim No Kill is akin to warehousing: to provide politically palatable excuses to continue killing. Most shelter staff is ill equipped to make the determination: they are not held to accountability standards, they have a history of under-performance, and they are looking for excuses to kill dogs. In the Twin Cities area of Minnesota, a shelter recently killed a lost police dog who strayed from his handler, by claiming he was aggressive and a threat to public safety. In reality, this dog was a highly trained narcotics detection dog who also went into schools as part of the humane education program of the police department. This dog *protected* public safety, but was labeled "aggressive" by incompetent shelter staff and killed.

There is very little reason to have faith in the temperament evaluations performed at most shelters. The tests used lack predictive ability, rigor, and consistency. And because of the pressure the No Kill movement has created for shelters to save lives, some shelters are turning to temperament testing to give them an excuse to kill by claiming the animals are "aggressive" or "unadoptable" and the methods they use reflect that. Some shelters simply bang on the side of kennels and see how the dogs react. If they show fear or concern, they are deemed aggressive and killed. Others rely on the casual, ad-hoc observations by unskilled and untrained staff. In fact, in a major U.S. city, people who score the *lowest* on a city aptitude test for employment are placed in the animal control shelter.

Those shelters who do offer a formal test almost invariably utilize the test advocated by Sue Sternberg, the most widely used temperament testing advocate in the country. In fact, the National Animal Control Association considers her the nation's leading expert and uses her to train shelter staff nationwide. But Sternberg's test is geared to overkill and results in too many dogs needlessly losing their lives even when they are not aggressive. While Sternberg has stated that a majority of shelter dogs are "unadoptable," those shelters that have rejected Sternberg's approach have been able to save upwards of 95% of all dogs. And finally, some shelters test dogs who are chronically underweight or injured and fail them when they act out by growling when the food is removed or another dog jumps on them. In fact, a common test advocated by Sternberg is to give a dog a highly regarded treat such as cat food or hot dogs, and then use a fake rubber hand to take the food away. If a dog growls at the hand, he is deemed aggressive and killed. In reality, many dogs who are not aggressive fear the fake rubber hands. Moreover, stray dogs may enter shelters underweight because they have not been eating regularly. Giving these dogs food and then taking it immediately away is setting such dogs up for failure. Hunger is not aggression, but shelters use it as an excuse to kill otherwise friendly dogs.

Sacrificing Cats to Save Face

In setting itself in opposition to Oreo's Law, the ASPCA and its allies are also sacrificing the lives of thousands of cats every year. Even if their concerns about "public safety" were authentic—which the facts and California's experience prove to be untrue—it is troubling that so-called "humane organizations" would oppose a law that has the potential to also save animals who do not pose any public safety risk: cats. In order to kill feral cats, shelters deem them "aggressive." Yet in the context of natural cat behavior, this is inappropriate. Often, unsocialized cats flee, rather than engage, humans, and therefore present no public safety threat. Oreo's Law would provide feral cats the same protections as companion dogs and cats by allowing Trap-Neuter-Release (TNR) advocates an opportunity to save feral cats shelters are determined to kill. Even "fractious" socialized cats are not a public safety risk, but are routinely killed in shelters. Oreo's Law would help save them, too. This is on top of the thousands of friendly cats such a law would save by empowering cat rescue organizations the authority to rescue these cats when shelters are planning to kill them.

While Oreo's Law was conceived because Oreo was claimed to be aggressive and killed, even in spite of the lifesaving alternative, the Law's reach is far greater. According to dog bite extrapolation data and the results of the best performing shelters in the country, only about 5% of shelter dogs are aggressive to people. As a result, the law will *also* and *primarily* save the 94% of dogs who are *not* aggressive—about 1% of dogs are irremediably suffering and will fall outside of Oreo's Law—and it would save *all* but irremediably suffering cats, who rescue groups are willing to save.

Bigger than Oreo

For over a hundred years, animal shelters in this country and their allies working at large, national animal protection organizations have argued that the killing of animals in shelters is unavoidable, and that the irresponsible American public is to blame. Without an alternative model to challenge the assumptions upon which these calculations were based—animal shelters were, by default, granted almost unequivocal discretion to kill millions of animals a year, while blaming others for the need to do so. Not only did this stymie any innovation seeking to reduce the numbers of animals killed, but, having been unchallenged in this course of action for so long, it had the unfortunate side effect of creating the expectation among shelter directors that they should be able to operate without public scrutiny, comment or accountability for their actions and decisions.

In the late 1990's, when the burgeoning No Kill movement proved that many of the assumptions upon which traditional sheltering were based were, in fact, untrue, and that nearly all animals entering shelters can be saved, traditional sheltering models had by that time become so firmly entrenched that any challenge to their hegemony was met with recrimination and hostility. And since that time, animal advocates throughout the country, working to reform their local shelters by demanding innovation find themselves at cross purposes, not only with their local shelters which refuse to reform, but, just as often, the large, national groups, such as the ASPCA, which come to the defense of their local shelter and its archaic, regressive policies which favor killing.

As a result, it is not uncommon for shelters to refuse the assistance of grassroots rescue organizations willing to save the animals they are determined to kill. Time and again, these organizations hold the animals hostage, ignoring the requests of local sanctuaries and rescue groups willing to assume responsibility and liability for their care, even as they then turn around and kill them, just as the ASPCA did to Oreo.

For far too long, those running our animal shelters—agencies funded by the philanthropic donations and tax dollars of an animal loving American public—have refused to mirror our progressive values. For far too long, they have assumed a power and authority to act independent of public opinion, and the will of the people who have entrusted them to do their jobs with compassion, dedication and integrity. In betraying this trust, they have proven that we must regulate them in the same way we regulate other agencies which hold the power of life and death: by removing the discretion which has for too long allowed them to thwart the public's will and to kill animals who should be saved. Oreo's Law, thankfully, seeks to do just that.

This law would save literally thousands of animals every year, by tipping the balance of power—which until now has exclusively favored shelters with an unlimited discretion to kill—in favor of those who want to save animals. This inequity, which has resulted in the needless killing of animals for well over a century, has long been an issue in need of reform. Yet, as often happens, it takes one sensational case to bring to the public's attention—and therefore scrutiny—a problem that is much larger, and more pervasive, than the single, well-publicized incident which brought it to light might seem to indicate. Oreo's Law, which has proven so successful in California, is a reasonable, common-sense and long overdue approach to fixing an endemic problem in the State of New York, even if the tragedy of Oreo's needless killing had not occurred.