



**NEW YORK
CITY BAR**

**COMMITTEE ON LEGAL ISSUES
PERTAINING TO ANIMALS**

MARTHA GOLAR

CHAIR

225 PARK AVENUE SOUTH

14TH FLOOR

NEW YORK, NY 10003

Phone: (212) 435-3406

mgolar@panynj.gov

May 10, 2011

The Honorable Andrew M. Cuomo

Executive Chamber

State Capitol

Albany, NY 12224

CHRISTINE L. MOTT

SECRETARY

20 EXCHANGE PLACE, #3804

NEW YORK, NY 10005

Phone: (917) 364-5093

cm1681@nyu.edu

Dear Governor Cuomo:

The New York City Bar Association's Committee on Legal Issues Pertaining to Animals ("LIPTA") is grateful for this opportunity to offer its views regarding important policy decisions facing the incoming administration that will have a substantial effect on the lives of New York's residents and its animals. Since we are cognizant of the fiscal realities facing the administration, we have tried to set forth suggestions in areas where the administration could have a positive impact while not creating financial burdens for the state.

WILDLIFE

Attitudes toward hunting vary significantly; however, many hunters agree that "canned hunting" should be banned. "Canned hunting" is the practice of shooting or spearing an animal in an enclosed area for a guaranteed kill. While this is permitted to a limited extent under Environmental Conservation Law (ECL) Sec.11-1904 provided that the animal is not tied or caged and the confined space is not less than ten acres, LIPTA supports an outright prohibition of canned hunts. In our analysis this practice violates ECL Title 1, Sec. 11-0103[6] and [10] which define hunting as the shooting and pursuing of "wild game" and other animals in a "wild state." Moreover, we contend that canned hunting violates the state's anti-cruelty statute which prohibits the unjustifiable killing of "any animal, whether wild or tame" (Agri & Mkts Law Sec. 353).

In 2003, a bill that would have prohibited canned hunting of non-native, big game animals overwhelmingly passed the Senate (S.6446-A) and the Assembly (A.10188-A), but was vetoed by Governor Pataki based on the perceived economic impact of shutting down canned hunting facilities. The killing which the bill would have prohibited in "a fenced or other area from which there is no means for such mammal to escape" is not even arguably sporting. Canned hunting has been prohibited in at least eleven other states (as of the writing of this letter).

Legislation is currently pending in the Legislature (S.3157/A.4475) which would prohibit canned hunting of non-native, big game animals. Although we recommend banning this practice in its entirety for the foregoing reasons, supporting passage of these bills would be a major step in the right direction. We recommend that you support the enactment of S.3157/A.4475.

FARM ANIMALS

Force Feeding

Only two states in the country practice force feeding ducks and geese for the production of foie gras, widely regarded as cruel. One is California, which passed a law in 2004 requiring, on animal cruelty grounds, that the practice be phased out by 2012 (and banning the sale of foie gras as of that year). The other state is New York.

This practice is a potential health risk, has caused environmental damage, exploits its workers and is cruel to the animals. The National Academy of Sciences and the International Journal of Food Safety, Nutrition, and Public Health have warned that foie gras is made from diseased liver, and may be contaminated with amyloid fibers which could trigger amyloidosis that damages body tissues and can affect major organs.¹

New York State brought an enforcement action against Hudson Valley Foie Gras (HVFG) in 2007, issuing a \$30,000 penalty to the company for violating state environmental law *over 900 times*.² In 2010, HVFG was also found to have violated the Clean Water Act. Federal Judge Harold Baer, United States District Judge, Southern District of New York, issued HVFG an injunction against any Clean Water Act violations, with fines of \$25,000 per day per violation for any further violations.³ Notably, these findings were made after a grant of \$420,000 of taxpayer money was made to HVFG in 2006 by the Empire State Development Corporation to expand its operations with a negligible increase in jobs.⁴ That same year, a Zogby poll underscored New York taxpayers' lack of support for this industry with 77% of New Yorkers supporting a ban on foie gras.⁵

There is also the plight of the workers to consider. Workers are "...underpaid, overworked, and often gruesomely exploited," as reported by Bob Herbert, op-ed columnist for the New York Times.⁶ During the 22 day, force-feeding period, it is necessary for the same worker (who is apparently not entitled to overtime pay or even an unpaid day off) to feed 200 to 300 ducks three times a day.⁷ The majority of these workers are Latinos.⁸

¹ Int. J. Food Safety, Nutrition and Public Health, Vol. 1, No. 2, 2008, Michael Greger, [Amyloid fibrils: potential food safety implications](http://www.humanesociety.org/news/press_releases/2009/02/foie_gras_journal_02102009.html), referred to in HSUS's report, http://www.humanesociety.org/news/press_releases/2009/02/foie_gras_journal_02102009.html (accessed March 2011).

² State Fines Foie Gras Plant for Manure Cesspool, North County Gazette, March 6, 2007, <http://www.northcountrygazette.org/articles/2007/030607FoieGrasFine.html> (accessed March 2011)

³ http://www.humanesociety.org/news/press_releases/2010/05/HVFG_050610.html (accessed March 2011)

⁴ <http://www.nofoiegras.org/kreuger.pdf> (accessed March 2011).

⁵ <http://www.nofoiegras.org/zogby.html> (accessed March 2011).

⁶ State of Shame, Bob Herbert, New York Times, June 8, 2009, http://www.nytimes.com/2009/06/09/opinion/09herbert.html?_r=1 (accessed March 2011).

⁷ Id.

⁸ Id.

A previously introduced bill in New York State (A.6212/S.3330 in 2005) described force-feeding of geese and ducks as the insertion of a long pipe into the bird's esophagus three times a day. "Compressed air is forced through the pipe to ensure the animal is fed an excessive amount," causing the bird's liver "to expand up to eight to twelve times its normal size. Often this force feeding of the animal causes the rupture of the animal's internal organs leading to infection and subsequently the animal's death."

Force feeding geese and ducks has been statutorily banned not only in California, but in numerous countries, including Austria, the Czech Republic, Denmark, Finland, Germany, Italy, Luxembourg, Norway, Poland and Turkey, and has been found to be in violation of anti-cruelty laws by the Supreme Court of Israel, as well as the courts of the Netherlands, Sweden, Switzerland and the United Kingdom. Force feeding has been condemned by Pope Benedict XVI. Your administration can close the gap in the United States by finally banning in New York State the production of foie gras by supporting the enactment of S.3867.

Concentrated Animal Farming Operations

The Pew Commission on Industrial Farm Animal Production ("PCIFAP") has well documented the effects of concentrated Animal Farming Operations ("AFOs"), specifically the fact that AFOs contribute to significant environmental pollution. It cited a study that reported "animal waste produced every year in the U.S. is 130 times greater than the amount of human waste - a total of 5 tons for every human being in the country."⁹ The United Nations' report, "Livestock's Long Shadow," states that livestock contributes to approximately 65% nitrous oxide, 37% methane and 9% carbon dioxide in the atmosphere.¹⁰ It is responsible for 18% of green house gases, at least on par with global land transport.¹¹ Therefore, reducing the concentration of animals would help reduce the water and air pollution and environmentally destructive greenhouse gases created by factory farms.

Not only is there overwhelming evidence of factory farming's environmental devastation, there is overwhelming evidence of factory farming's extreme cruelty to animals. The extreme confinement of calves, cows, and hens within crates and cages just sufficient to contain the perimeters of their bodies is inherently cruel. It deprives them of even the barest essentials such as lying down, standing up, fully extending their limbs, or turning around.

Nationally, about one million calves raised for veal and six million breeding sows (female pigs) are confined in such small spaces. Veal calves, tethered for as long as sixteen weeks in two-foot-wide crates which do not permit them to walk or exercise, experience digestive problems, impaired locomotion, and a greater susceptibility to disease.¹² Gestation crates for breeding sows are individual, concrete-floored metal stalls that measure 2 – 2.3 feet wide by 6.6 – 6.9 feet long, dimensions only slightly larger than the animal herself. These stalls

⁹ <http://www.ncifap.org/issues/environment/> (accessed March 2011).

¹⁰ <ftp://ftp.fao.org/docrep/fao/010/a0701e/a0701e00.pdf>, p.23 (accessed March 2011).

¹¹ Id.

¹² Farm Sanctuary, *The Welfare of Cattle in Dairy Production: A Summary of the Scientific Evidence*, http://www.farmsanctuary.org/mediacenter/assets/reports/dairy_report.pdf, (accessed January 2011).

so severely restrict movement that sows are unable even to turn around in them.¹³

Approximately 98% of egg-laying hens in the United States are confined in battery cages, where they also cannot turn around, or spread their wings. Each bird is allotted an average space of about 61 square inches, smaller than an 8 ½ by 11 inch piece of paper.¹⁴

Legislation has been introduced in the Assembly (A.1928) which would amend the Agriculture and Markets Law by adding a new Section 353-e that would alleviate such extreme confinement by providing a modicum of extra space to turn around and engage in more natural behaviors. Six other states – Florida, Arizona, Oregon, Colorado, California and Maine - have enacted similar reforms.¹⁵ The Committee supports enactment of this legislation.

WILD ANIMALS IN ENTERTAINMENT AND AS PETS

Wild animals in entertainment have caused human fatalities and injuries that can be prevented only by prohibiting wild animals in entertainment, and as pets. Nationwide since 1990, human fatalities and injuries caused by wild animals in entertainment or as pets include (i) 15 deaths and over 135 injuries by captive elephants;¹⁶ (ii) 20 deaths and over 230 injuries by captive large cats;¹⁷ (iii) 5 deaths and over 40 injuries by captive bears;¹⁸ and (iv) one death and over 205 injuries by captive primates.¹⁹ These incidents have resulted in the killing of elephants, and at least 84 big cats and 30 primates.²⁰ The possession of wild animals as pets is also a hazard for unwitting New York State consumers since certain wild animals have been known to carry serious diseases that can be transmitted to people, such as Monkey Pox, Herpes B, Salmonella and Ebola virus. There have also been instances of wild animals escaping their homes and attacking their owners and other people. This also unnecessarily imperils police and rescue workers.

Although these facts are sufficient to ban wild animals in entertainment, and as pets, people are not the only victims. Animals also suffer immense cruelty and death for purposes of providing “entertainment.” The animal “stars” endure inordinate cruelty from birth. For example, most elephants that are used in circuses were captured in the wild, ripped from their

¹³ Commission of the European Communities, 2001. COM (2001) 20 final 2001/0021 (CNS) Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particular taking into account the welfare of sows reared in varying degrees of confinement and in groups. Proposal for a Council Directive 91/630/EEC laying down minimum standards for the protection of pigs, as cited in Humane Society of the United States, An HSUS Report: Welfare Issues with Gestation Crates for Pregnant Sows, 1 (2008), <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Gestation-Crates-for-Pregnant-Sows.pdf> (accessed January 2011).

¹⁴ United Egg Producers, United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, <http://www.uepcertified.com/program/guidelines/categories/housing-space-feed-water>, (accessed January 2011).

¹⁵ Art. X, §21, Fla. Const. (adopted 2002); Ariz. Rev. Stat. §13-2910.07, Cruel and inhumane confinement of a pig during pregnancy or of a calf raised for veal (2007); 2007 Or. Laws Chapter 722; Colo. Rev. Stat. §35-50.5 (2008); California Health & Safety Code §§ 25990-25994 (2009), previously known as the Prevention of Farm Animal Cruelty Act; LD 1021, passed both houses of Maine legislature and was signed into law by Governor John Baldacci May 12, 2009.

¹⁶ <http://www.mediapeta.com/peta/pdf/Elephant-Incident-List-US-only.pdf>.

¹⁷ <http://www.mediapeta.com/peta/pdf/Big-Cat-Incident-List-US-only.pdf>.

¹⁸ <http://www.mediapeta.com/peta/pdf/Bear-Incident-List-US-only.pdf>.

¹⁹ <http://www.mediapeta.com/peta/pdf/Primate-Incident-List-US-only.pdf>.

²⁰ See previous PETA incident lists.

close-knit families, chained and confined in poorly ventilated trailers and boxcars for up to 50 weeks a year. Baby elephants born in circus breeding farms suffer an equally cruel fate. Upon birth, they are confined in isolation, so that their human trainers can begin indoctrinating them. Abuse is routine, and their training sessions involve the use of bullhooks and being shocked with electric prods to force them to perform unnatural and difficult tricks. An elephant may spend up to 96% of her time in chains. Elephants often suffer crippling injuries from years of this protracted treatment.

The Committee submits that the appropriate legislative response for New York State is a ban, rather than any attempt to regulate the treatment of these animals. Regulation in this area has failed to rectify the abuses that are fundamental to the exploitation of these animals. Even the Animal Welfare Act (7 U.S.C., 2131 *et. seq.* (2000)), which purports to protect wild and exotic animals used in exhibition, has been ineffective in improving common practices of mistreatment, neglect and extreme cruelty in the circus and animal entertainment industry, and lacks adequate enforcement.

Similarly, with respect to possessing wild animals as pets, federal laws are limited in that they primarily regulate their importation into the United States, and related commerce, but not private possession (other than possibly under the Endangered Species Act, 17 USC section 1538 *et seq.*). The regulation of the private possession of wild animals falls to state and local governments. At least twenty states currently prohibit private ownership of certain wild animals as pets, a position supported by the United States Department of Agriculture, the Center for Disease Control and the American Veterinary Medical Association. New York City already prohibits the ownership of wild animals. (See New York City Health Code section 161.01.)

A state-wide ban on wild animals in entertainment and on possessing wild animals as pets would bridge the regulatory gaps left by local and federal legislation to provide a uniform regulatory framework in New York State, and would help ensure that New Yorkers are not added to the statistics of humans killed or maimed by wild animals.

COMPANION ANIMALS

Dog Tethering

The New York City Council recently overwhelmingly passed an ordinance prohibiting continued outdoor tethering of a dog for a period of more than three consecutive hours in any twelve-hour period (New York City Local Law 10 of 2011, Council Int. No. 425-2010, enacted February 1, 2011).²¹ The ordinance also prohibits, among other things, the use of choke or pinch collars and the use of a tether that is too heavy, that would become entangled or that may result in strangulation or injury to the dog. The ordinance increases fines and includes jail time after a first offense. The New York City Council noted upon passage of the bill gruesome injuries from prolonged tethering such as a chain becoming embedded in a dog's neck.²²

The practice of dog tethering has been shown to be dangerous to people as a public safety issue, as well as to the dogs. Studies have shown that dogs who are chained for long periods of

²¹ http://council.nyc.gov/html/releases/01_18_10_prestated_animals.shtml (accessed March 2011).

²² http://abclocal.go.com/wabc/story?section=news/local/new_york&id=7905480 (accessed March 2011).

time are not properly socialized and have a tendency to be more aggressive. For example, the Center for Disease Control, the U. S. Department of Agriculture, the Humane Society of the United States, and the American Veterinary Association have all concluded that chaining or tethering dogs creates a significantly greater risk that they will bite. According to the September 15, 2000 issue of the Journal of the American Veterinary Medical Association, 17% of dogs who fatally attacked people between 1979 and 1998 were restrained on their owners' property at the time of the attack.

The cruelty involved in prolonged tethering has been recognized by a number of authorities and states. The U. S. Department of Agriculture issued a statement in the July 2, 1996, Federal Register that: "Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects; further restricting the dog's movement and potentially causing injury."

The Committee recommends that this administration support state legislation that would replicate the law passed by the New York City Council with the following recommendations: (1) restrict tethering to a maximum of three hours in any twenty-four hour period; (2) require that the chained dog have access to covered shelter and fresh water; (3) require for small dogs that a minimum length of fifteen feet for a tethering device attached to a fixed point and a minimum ten feet for a running cable trolley system, with tethering lengths increased in proportion to the size of the dog; and (4) require that any tethering device be appropriate to the age and size of the dog by adopting a sliding scale to increase minimum tether lengths as the size of the dog increases. Any tethering statute should be construed in the context of the obligation under existing State law to feed, water and shelter any companion animal.

FIRE SAFETY

By supporting state fire safety legislation, your administration could save the lives of a large number of confined animals while also preventing needless injury to people. Fires in pet stores or in other areas where animals are confined can have tragic consequences. For example, more than 1,000 animals were killed in a pet store fire on Long Island in 2004.²³ Two years earlier, more than 200 animals died in a pet store fire in Manhattan.²⁴ In 2006, 130 firefighters responded to a pet store fire in Queens and many neighbors also tried to rescue the animals.²⁵ In 2010, firefighters had to force their way into a burning pet store in Astoria by cutting through the roll down gates and were able to rescue 30 cats and dogs while other animals perished.²⁶ Confined animals have no means to escape a fire, which renders fire safety standards critical to their well-being.

Article 26-A of the Agriculture and Markets Law entitled "Care of Animals by Pet Dealers" sets forth minimal housing standards for animals including lighting, flooring, ventilation, and temperature controls sufficient to keep the animals in good health. Although the New York State Legislature clearly intended to provide for the confined animals' safety against,

²³ <http://www.petstoreabuse.com/fires.html> (accessed March 2011).

²⁴ Id.

²⁵ http://gothamist.com/2006/08/07/130_firefighter.php (accessed March 2011).

²⁶ http://www.nydailynews.com/ny_local/2010/06/01/2010-06-01_fdney_saves_30_critters_in_pet_shop_fire.html (accessed March 2011).

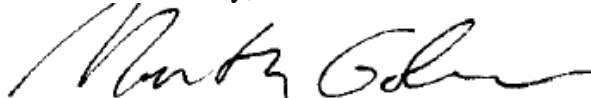
among other things, fire, a fire safety requirement was omitted. Amending the law to make fire safety a requirement is both rational and necessary to effectuate the purpose of the statute.

Similar to previously proposed state legislation, any licensed pet dealer whose place of business is separate from his or her residence should be required to maintain in their place of business a fire alarm system and automatic dialing device in order to notify the local fire department and/or emergency service agencies in the event of a fire. That legislation, for example, defined (1) “fire alarm system” as any assembly of equipment or device arranged to signal the presence of a fire hazard requiring urgent attention and to which police, fire, or emergency service agencies are expected to respond; and (2) “automatic dialing device” as a device activated by a fire alarm system which is connected to a telephone line and is programmed to access a predetermined emergency agency number and transmit by voice message or coded signal to an emergency agency an emergency message indicating a need for emergency response. It should also be required that a fire suppression sprinkler system be installed.

California has enacted similar fire safety legislation that requires pet dealers to maintain either (a) a fire system connected to a central reporting station that alerts the local fire department in case of fire or (b) a fire suppression sprinkler system. (Cal. Health & Safety Code § 122155.) Fire safety legislation would help protect animals sold as pets and prevent personal injury to people trying to save them.

The LIPTA Committee sincerely thanks you for your attention to our concerns. We know that you will act in the best interests of all New Yorkers, both human and non-human.

Yours truly,

A handwritten signature in black ink, appearing to read 'Martha Golar', written in a cursive style.

Martha Golar

Chair,

Legal Issues Pertaining to Animals Committee