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**WRITTEN TESTIMONY OF
THE ANIMAL LAW COMMITTEE
OF THE NEW YORK CITY BAR ASSOCIATION
IN SUPPORT OF INTRO. 1378-2019**

**The New York City Council
Committee on Health**

Tuesday, June 18, 2019, 10:00 a.m.

Good morning. I am a New York attorney testifying today on behalf of the New York City Bar Association’s Animal Law Committee (the “Committee”). The New York Committee has previously supported state bills that would ban the force-feeding of birds.¹ Today the Committee voices its support of Intro. 1378, which would ban the sale of certain poultry products that are the result of force-feeding birds.

The Committee on Health should vote in favor of the local law because the law would better align our city’s laws with our city’s values — values like treating animals humanely.

REASONS FOR SUPPORT

Foie gras is a luxury food made by force-feeding ducks and geese. Several times a day the bird has a tube inserted into its esophagus and, by means of a pneumatic or hydraulic pump,² is forced to eat high-energy food it neither wants nor needs.³ This force-feeding can injure the bird’s esophagus and abnormally fattens the liver, which has reduced function and can painfully swell to

¹ New York City Bar Association, Animal Law Committee, Report on S. 456 (June 2013), <https://www2.nycbar.org/pdf/report/uploads/20072525-ProhibitingofForceFeedingBirds.pdf>; Report on A. 6212-A/S. 3330-A (June 2005), https://www.nycbar.org/pdf/report/foie_gras_report.pdf. All websites last visited June 17, 2019.

² Michaela DeSoucey, Contested Tastes: Foie Gras and the Politics of Food 51 (2016).

³ American Veterinary Medical Association (AVMA), Welfare Implications of Foie Gras Production: Literature Review 1-2 (May 7, 2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/foie_gras_bgnd.pdf.

up to ten times its normal size⁴ and become diseased.⁵ The product of this process — which many veterinarians declare inherently inhumane⁶ — is foie gras.

Neither federal law nor state law specifically protects ducks and geese from this force-feeding. At the federal level, the Animal Welfare Act of 1970 expressly exempts animals raised for food,⁷ while the Humane Methods of Slaughter Act does not even mention birds.⁸ At the state level, New York’s anti-cruelty statute⁹ could, in our view, be interpreted to prohibit force-feeding, though we are unaware of any prosecutions on these grounds. Moreover, a state ban on the act of force-feeding would not stop the in-state sale of products from force-fed birds; it would just mean a change of suppliers.¹⁰

By passing Intro. 1378 the City Council could help protect birds from this inhumane practice. In particular, Intro. 1378 would ban the sale of products that are the result of force-feeding birds with the intent to fatten or enlarge the bird’s liver.

Passing this local law would bring New York City in line with other jurisdictions that have recognized the inherent cruelty of this so-called “delicacy.” In particular, in 2004 California became the first state to amend its health code to outlaw the in-state sale and production of foie gras.¹¹ That ban, which took effect in 2012, was upheld by the Ninth Circuit, and just this January

⁴ *Id.* at 2.

⁵ The Humane Society of the United States, Scientists and Experts on Force-Feeding for Foie Gras Production and Duck and Goose Welfare, <https://www.humanesociety.org/sites/default/files/docs/hsus-expert-synopsis-force-feeding-duck-and-geese-welfare.pdf>.

⁶ *See, e.g., id.* at 4, 7.

⁷ 7 U.S.C. § 2132(g) (excluding from the definition of “animal” “other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber”).

⁸ 7 U.S.C. § 1902 (referencing “cattle, calves, horses, mules, sheep, swine, and other livestock”). Although the Secretary of Agriculture could, under 7 U.S.C. § 1904, include birds among “other livestock,” the Secretary has to date declined to do so. *See* Cynthia F. Hodges, Detailed Discussion of the Humane Methods of Slaughter Act (2010), <https://www.animallaw.info/article/detailed-discussion-humane-methods-slaughter-act>. Indeed, while noting that existing law requires poultry to be treated humanely in line with “good commercial practices,” in 2015 the United States Department of Agriculture (“USDA”) issued a notice declaring that “there is no specific federal humane handling and slaughter statute for poultry.” USDA, Food Safety and Inspection Service [Docket No. 04–037N], Notice: Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624 (Sept. 28, 2005).

⁹ N.Y. AGRIC. & MKTS. L. § 353.

¹⁰ While the largest producer of foie gras in the United States is located in upstate New York, most of the world’s foie gras comes from France. Ari Z. Zivotofsky, *Duck, Duck, Goose*, Mishpacha Jewish Family Weekly (Jan. 2, 2019), <http://mishpacha.com/Browse/Article/11786/Duck-Duck-Goose> (noting that Hudson Valley Foie Gras is the country’s largest producer of foie gras); Ruud Peys, *Excellent Year for French Foie-Gras*, Poultry World (March 9, 2016), <https://www.poultryworld.net/Meat/Articles/2015/3/Excellent-year-for-French-foie-gras-1728020W/>; *see also* Hudson Valley Foie Gras “About Hudson Valley Foie Gras,” <https://www.hudsonvalleyfoiegras.com/about-us>.

¹¹ SB-1520 Force fed birds, as amended May 6, 2004 (2003–2004) (codified at CAL. HEALTH & SAFETY CODE §§ 25980–25984). The text of the California law is available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=200320040SB1520.

the U.S. Supreme Court declined further review.¹² In addition, over a dozen countries — including India, Germany, the UK, and Israel — have banned production of foie gras and deemed force-feeding a violation of national animal welfare laws.¹³ Indeed, the Israel Supreme Court’s 2003 decision led to an abolition of the foie gras industry in Israel, which at the time was the world’s fourth-largest producer of the product.¹⁴

Banning foie gras may have other benefits too. For instance, one 2007 study cautions children and adults with rheumatoid arthritis against consuming the product, due to the potential transmission of amyloidosis, a disease that occurs when substances called amyloid proteins build up in organs.¹⁵

For the reasons above, the New York City Bar Association’s Animal Law Committee urges the Committee on Health to vote in favor of Int. 1378. Thank you.

¹² *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Harris*, 729 F.3d 937 (9th Cir. 2013), cert. denied, 586 U.S. ___ (U.S. Jan. 7, 2019) (No. 17-1285). The text of the Ninth Circuit opinion is available at <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/09/15/15-55192.pdf>.

¹³ These countries include Argentina, Denmark, Finland, Germany, India, Israel, Italy, Norway, Poland, and the United Kingdom. The Humane Society of the United States, *An HSUS Report: The Welfare of Animals in the Foie Gras Industry*, HSUS Reports, at 7 (March 2012), https://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1021&context=hsus_reps_impacts_on_animals (including citations to relevant legislation).

¹⁴ Israeli Supreme Court, *Noah v. The Attorney General et al.*, HCJ n° 9232/01 (Aug. 13, 2003), available at <https://www.animallaw.info/sites/default/files/Israel2003case.pdf>. The 2003 decision also referenced the traditional Jewish duty to protect animals, as reflected in the Torah and Jewish law. *Id.* at 22-22. See also Sophie Inge, *Israel Risks French Ire with Ban on Foie gras*, *The Local* (Aug. 2, 2013), <https://www.thelocal.fr/20130802/israel-to-ban-foie-gras-selling-and-importation>.

¹⁵ Alan Solomon et al., *Amyloidogenic Potential of Foie Gras*, 26 PNAS 10998-11001 (2007), <https://www.pnas.org/content/pnas/104/26/10998.full.pdf>. The USDA’s Food Safety and Inspection Service did not determine that the study warranted a finding that foie gras was an adulterated food product, finding though that the presence amyloid-enhancing factors in birds used for foie gras was “not surprising,” as amyloidosis is “fairly common in ducks in general.” Letter from Philip S. Derfler, Food Safety and Inspection Service to Peter J. Petersan, Esq., *The Humane Society of the United States* (Aug. 27, 2009), <https://tinyurl.com/y4mx9w8u>.