

Rescue Access to Shelter Animals:  
*An Analysis of the Impact of California's "Rescue Access" Law and Its Applicability Elsewhere*

Executive Summary

California requires public and private shelters to release animals who are not "irremediably suffering" to nonprofit animal rescue and adoption groups with Internal Revenue Code §501(c)(3) status, as long as those groups request the animals "prior to [the animal's] scheduled killing." This "rescue access provision" is part of the Hayden Law (also known as Chapter 752, Statutes of 1998), which first went into effect on July 1, 1999. The analysis concludes that over the last ten years since its enactment, the Hayden Law has led to many concrete, positive changes for shelter animals and the rescue groups committed to saving them.

In particular, the "rescue access" provision of the Hayden Law has empowered nonprofit groups to save more animals' lives, to lower killing rates in our shelters, and also to save taxpayer money. The law has also led to positive culture changes in shelters. In one case prior to its enactment, shelter employee hosed down the cage of a dog that had just had puppies, resulting in one of the puppies being swept down the drain and drowned. The shelter not only neglected animals, but it also refused to work with rescue groups. In fact, the shelter was a prime example of why the rescue access provision was so essential, despite the common myth that shelters would never act irrationally and immorally by wasting taxpayer money by killing and disposing of animals that rescue groups were willing to save. Thanks to the Hayden Law, the number of cats and dogs rescued from that shelter immediately started to increase from zero before Hayden was implemented to over 1200 cats and 2500 dogs annually. And now that rescue groups have legal access and no longer fear retaliation, they have successfully lobbied for overall improvements in shelter operations.

Other species entering shelters also benefit from the Hayden Law's rescue access provision, not just dogs and cats. While rabbits are the third most popular pet after dogs and cats, most shelters in California prior to the enactment of the Hayden Law did very little for them. The Hayden Law places cats, dogs, and small animals on the same footing. Thus, the fact that the Hayden Law establishes mandatory rescue access for small animals as well as cats and dogs has helped create a more vibrant and professional small animal rescue community. As a result, more rabbits and other small animals are getting out of shelters alive.

Before the Hayden Law, there was great variation in how willing public shelters were to work with nonprofit groups: "Some are better than others, some more proactive, some more difficult... Some still think they're [role is to] house and kill [animals]." One shelter went from refusing to give any animals to rescue groups despite the highest killing rate in the state to transferring over 4,000 animals a year. Not only did this save lives, but enormous taxpayer money as well. In fact, one analysis found taxpayer savings of nearly \$500,000 a year in one community as a result of these public-private partnerships.

By contrast, in states with no equivalent of the rescue access provision of the Hayden Law, rescuers have a much more difficult time trying to save lives and improve shelters; in the absence of any legal

mechanism to require that shelters work with rescue groups, rescuers are fearful of the shelters' unchecked power to retaliate against them. The result is that animals who are neglected and even abused in shelters are more likely not to be helped, and animals who would otherwise be rescued are killed instead.

Aside from the emotional toll on rescuers, the fact that many rescue organizations cannot operate effectively due to retaliation from shelters only reaffirms the need for rescue access laws in states outside of California. In New York and Washington, for example, rescue groups state that the lack of a rescue access law has caused many of them to lose rescue access because they criticized shelters publicly.

Overall, the past ten years of experience with rescue access legislation in California reveal that rescue groups can significantly increase the number of animals saved and significantly decrease shelter killing rates and expenditures. Although there continue to be resistant shelter managers, there have been many improvements as a result of the Hayden Law.

Moreover, there is no evidence that the problems predicted by some when the law was considered, such as hoarding or exposing the public to dangerous dogs, has ever materialized.

Rescue Group Access to Shelter Animals:

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## Introduction

California requires public and private shelters to release animals who are not "irremediably suffering" to nonprofit animal rescue and adoption groups with Internal Revenue Code §501(c)(3) status, as long as those groups request the animals "prior to [the animal's] scheduled killing."<sup>1</sup> This "rescue access provision" is part of the Hayden Law (also known as Chapter 752, Statutes of 1998), which first went into effect on July 1, 1999. The Hayden Law consists of several statutory changes designed to reduce California's high shelter killing rates.<sup>2</sup> The Law made it the official "policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home"<sup>3</sup> and that "no treatable animal should be euthanized."<sup>4</sup> "[T]he law mandated, among other things, that shelters work with rescue groups, provide prompt and necessary veterinary care, expanded the minimum impound time [from 72 hours] to 4 or 6

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<sup>1</sup> Cal. Food & Agric. Code, Section 12, § 31108(b) ("Any stray dog that is impounded pursuant to this division shall, prior to the killing of that animal for any reason other than *irremediable suffering*, be released to a nonprofit, as defined in Section IRC §501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization prior to the scheduled killing of that animal." (emphasis added)); *see also* Section 13, § 31752(b) (rescue access provision for cats); Section 15, § 31753 (rescue access provision for "[a]ny rabbit, guinea pig, hamster, pot-bellied pig, bird, lizard, snake, turtle, or tortoise legally allowed as personal property").

<sup>2</sup> Taimie Bryant, a professor at UCLA School of Law Professor, served as a consultant to then State Senator Tom Hayden, the author of the Hayden Law. Professor Bryant has written several articles about the Hayden Law, including the following: *Loss of Face: California's 1998 Legislation to Address Homelessness Among Companion Animals* (published circa 2000) (discussing the Hayden Law in the context of three animal shelter reform laws enacted in California in 1998) available at [http://www.nokillnow.com/Loss\\_of\\_Face.pdf](http://www.nokillnow.com/Loss_of_Face.pdf); *Hayden Law: An Analysis* (published circa 2001) (discussing the reasoning behind different provisions of the Hayden Law) available at [http://www.maddiesfund.org/nokill/nokill\\_legis\\_hayden.html](http://www.maddiesfund.org/nokill/nokill_legis_hayden.html); *The Uncertain Present and Future of the Hayden Shelter Reform Legislation of 1998* (published circa 2004) (discussing aspects of the enactment of the Law and describing the impact of legal action taken by animal shelters to require the State to reimburse expenses associated with implementation of the Law) available at [http://www.maddiesfund.org/news/news\\_pdfs/hayden\\_update.pdf](http://www.maddiesfund.org/news/news_pdfs/hayden_update.pdf); *Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans*, 39 Rutgers Law Journal 247-330 (discussing at pp. 314-328 the history of the Hayden Law, its provisions, and the difficulties in getting the law enacted). The Hayden Law is also discussed by Nathan Winograd in his book, *Redemption* at pp. 123-127 (2007).

<sup>3</sup> Cal. Food & Agric. Code, Sec. 10, § 17005(a); Cal. Penal Code, § 599d; Cal. Civil Code § 1834.4.

<sup>4</sup> Cal. Food & Agric. Code, Sec. 10 § 17005(b) ("A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts."). Originally, the language of the Act used the word "kill" but it was amended in subsequent years at the request of shelters to "euthanasia."

business days in order to give owners sufficient time to reclaim lost animals and to give animals a chance of being adopted.<sup>5</sup>

Over the last ten years since its enactment, the Hayden Law has led to many concrete, positive changes for shelter animals and the rescue groups committed to saving them.<sup>6</sup> A Los Angeles rescue group sums it up succinctly: "There's no doubt that the situation is better under the Hayden Law."<sup>7</sup> Similarly, when asked whether its relationship with shelters has improved with the passage of the Hayden law, a California-based rabbit rescue group replies, "Yes, yes and yes."<sup>8</sup>

In particular, the "rescue access" provision of the Hayden Law has empowered nonprofit groups to save more animals' lives and to lower killing rates in our shelters. As attorney Kate Neiswender, Chief Consultant to California State Senator and author of the Hayden Bill Tom Hayden, explained, nonprofits not only "find homes for the most difficult animals and take the time to work on temperament," but they also save the state money because, "The more animals you euthanize the higher your costs are going to go . . . it costs about \$70 to hold [animals], kill [them], and then have the body removed."<sup>9</sup>

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<sup>5</sup> Nathan Winograd, *The Hayden Law: What Happens Now?*, S. F. Animal Shelters Examiner, August 31, 2009, at 1. See also, Bryant, *supra* note 2.

<sup>6</sup> This is not to say that the Hayden Law is without limitations. It is the product of a particular time in the history of sheltering when progressive, life-saving thinking was just taking root in the United States. For more information about the limitations of the Hayden Law, see articles by Bryant, *supra* note 2.

<sup>7</sup> [ ] Interview at 2. All names have been redacted for privacy reasons.

<sup>8</sup> [ ] Interview at 1.

<sup>9</sup> Kate Neiswender Interview at 1; *see also* Brenda Barnette Interview at 1 (Brenda Barnette, General Manager for Los Angeles Animal Services, agreed that allegations that the Hayden Law would cost too much money to implement was unfounded, because, "The figures demonstrated that it was more expensive to euthanize the animals and to cremate or dispose of the bodies than it was to actually keep them." Barnette also notes that other intangible costs included "the bad will to the public plus the wear and tear on the staff that had to do the killing.").

The purpose of this report is to evaluate the impacts of the rescue access provision of the Hayden Law, whether it would be a useful law in other states, and possible hurdles to its enactment elsewhere. The report is based largely on firsthand accounts told by members of the animal rescue and shelter community. An analysis of these firsthand accounts shows that over the last decade, the rescue access provision has had both direct and indirect positive impacts. Direct positive impacts include imposing legal obligations on shelters to work with rescues and officially recognizing that all species of animals are worthy of humane treatment. Indirect positive impacts include improved cooperation between shelters and rescue groups, a more professional, vibrant rescue community, and increased public awareness and media attention, which in turn reinforce compliance with the law.

Of course, the Hayden Law could not anticipate or solve all problems of rescue group access to shelter animals. It was a product of compromise—as all legislation is—and it was enacted to balance the public’s animal-loving and progressive attitude with the conservative desire of shelters to maintain the status quo and retain absolute power over shelter operations. At that time, and even now, the public has been more willing than traditionalist shelters to ensure that rescue groups are empowered with the legal tools to save lives. Thus, this report also investigates how political compromise and insufficient shelter compliance with the Hayden Law has reduced the potential benefits of the law on rescue group access to shelter animals in California. This information can be helpful to lawmakers in other states to ensure that the same mistakes are not repeated.

Finally, this report contains comparative data from states that do not have an equivalent to California's rescue access provision. It concludes that the antagonism between shelters and rescue groups and the fear of shelter retaliation which inhibits the work of rescue groups make it

critical to have rescue access provisions in other states. However, the report also addresses some anticipated hurdles to the passage of such laws.

## I. Direct Positive Effects of the Hayden Law

### A. A Legal Duty to Work with Rescue Groups

The rescue access provision of the Hayden Law establishes that shelters have a legal duty to turn over animals requested by IRC §501(c)(3) nonprofit groups. This mandate saves lives and taxpayer money regardless of how willing or unwilling shelter management would have been to transfer animals voluntarily.

During hearings conducted by the California Legislature prior to enacting the Hayden Law, some legislators asked why efficient shelter managers would not, on their own, willingly release shelter animals to rescue groups; doing so would have reduced those shelters' costs of killing and carcass disposal.<sup>10</sup> In fact, there are several answers to that question.<sup>11</sup> First, shelters' budgets were frequently calculated by reference to the costs of killing and carcass disposal. If shelters killed less, they feared their budgets would be reduced. Moreover, shelters could not count on being able to keep adoption revenues from adoptions to the public, which shelters could have used for other programs. Adoption revenues would go into general municipal accounts and not be allocated specifically for shelter management use.

Another reason shelters were reluctant to release to rescue groups is that they had not yet adapted to changed public perceptions that individual animal's lives matter. Many shelter managers in California had "come up through the ranks" with long time experience in a system

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<sup>10</sup> Taimie Bryant, interview of November 29, 2010.

<sup>11</sup> Id. Professor Bryant, Lois Newman, the head of an L.A. based rescue organization, and Paula Kizlak, a veterinarian, conducted research on shelter management practices before the Hayden Law was introduced. The information in this paragraph was derived from that study. That research is described in footnotes 274 and 276 of Bryant's article *Sacrificing the Sacrifice of Animals*, supra note 2.

that desensitizes humane values and promotes the view that killing is the only solution to the belief that there are “too many animals and too many irresponsible owners.” Additionally, many shelter managers did not want to be bothered with adopting pets, let alone deal with rescue groups. They understood their primary jobs to be keeping the streets free of strays rather than running lost and found facilities. The animals they killed would not be adopted and potentially allowed to roam the streets again. Finally, having the discretion, but not the obligation, to release to rescue groups meant that shelter managers could effectively silence criticism of their shelters by threatening to deny animals to rescuers who criticized them.

Once the Hayden Law was enacted, it proved to be a powerful tool for change. In one case, an animal advocate and rescuer found herself in the middle of a moral dilemma while conducting rescue work at the Los Angeles County shelters.<sup>12</sup> She "personally observed animals locked in filthy kennels or cages, where the animals were forced to stand or lie in their own feces and urine, without access to water ..., dead animals lying in kennels or cages alongside live animals; [and] sick or injured animals suffering in kennels or cages without veterinary attention."<sup>13</sup> Her attempts to work with the shelter to improve conditions were rebuffed. However, she was initially reluctant to go to the Board of Supervisors for help for fear that the shelter would retaliate against her by not allowing her to continue rescuing animals.

The tipping point came when she notified the shelter that she was coming "first thing on Saturday morning" to rescue a ten month old puppy who had become very ill, but who the shelter failed to treat.<sup>14</sup> By the time she arrived, the puppy, who had entered the shelter healthy, was

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<sup>12</sup> [ ] Interview at 1.

<sup>13</sup> *Nguyen vs. Los Angeles County Department of Animal Care & Control* (Compl. for Injunctive Relief ¶ 21.)

<sup>14</sup> *Id.*

"basically a bag of bones on a concrete slab."<sup>15</sup> The young dog had died of advanced pneumonia and marked emaciation, because it had not received adequate veterinary care. She continued, "And that was it for me."<sup>16</sup>

After this rescuer went public to try to effect change, the shelter director revoked her ability to rescue animals, choosing instead to kill those animals. She challenged her ouster by taking legal action, and the shelter was forced to reinstate her rescue rights.<sup>17</sup> Specifically, Los Angeles County shelters were ordered by the courts to refrain from "retaliat[ing] against rescue groups and volunteers who publicly expose agency malfeasance" and required them to "release animals to rescue groups instead of killing them."<sup>18</sup> However, because the rescue access provision only requires shelters to turn over animals that are not "irremediably suffering,"<sup>19</sup> animal rescuers were still concerned that Los Angeles County would simply use discretion in defining "irremediable suffering" to avoid transferring animals to rescue groups that might only

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Rebecca Arvizu, *Animal Lovers Allege Animal Neglect Continues At County Shelters Despite Court Order*, No Kill Advocacy Center (Oakland), Feb. 16, 2009, at 1.

Specifically, the stipulated order mandated that the County:

1. Not kill an animal during the State mandated holding period unless the animal meets narrow exceptions permitted by law
2. Provide veterinary care to ill and injured animals
3. Release animals to rescue groups instead of killing them
4. Not retaliate against rescue groups and volunteers who publicly expose agency malfeasance
5. Restore the volunteer and rescue rights of plaintiff Cathy Nguyen
6. Provide access to shelter records to ensure compliance. *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Cal. Food & Agric. Code, Section 12, § 31108(b); *see also* Section 13, § 31752(b); Section 15, § 31753.

have minor health problems. As a result, as part of the agreement, rescuers required Los Angeles County to agree to a strict definition of what constitutes "irremediable suffering."<sup>20</sup>

The rescuer noted that before she went public, she had tried to "bring about change within the system," but she was ignored by shelter management.<sup>21</sup> However, after the Hayden decree, even though a few shelters were still difficult to work with, she confirmed that many shelters became more cooperative because they had a legal obligation to follow the Hayden Law.<sup>22</sup> When asked what would have happened if the Hayden Law did not exist, she responded that many more animals would be killed and rescue groups turned away: "I think it would be a disaster, especially with so many people turning in animals because of losing their jobs and their homes."<sup>23</sup>

Kate Neiswender, attorney and Chief Consultant to California State Senator Tom Hayden, also witnessed firsthand the positive impacts that the Hayden Law had on the Kern County municipal shelter. In describing the situation at Kern County prior to the Hayden Law, Neiswender told the story of a shelter employee hosing down the cage of a dog that just had puppies, resulting in one of the puppies being swept down the drain:

They're tiny, and he just takes this high powered hose and washes down the kennel with cold water in the middle of the winter. This is the way they did things, and they just washed [the puppy] down the drain...<sup>24</sup>

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<sup>20</sup> *DACC Stipulated Order: No Kill Advocacy Center v. County of Los Angeles*, Los Angeles County DACC Watch Blog, October 24, 2008, at 1, available at <http://lacdacc.blogspot.com/2008/10/dacc-stipulated-order-cathy-nguyen-et.html> ("Irremediable suffering" was defined as "[a]n animal with a medical condition who has a poor or grave prognosis for being able to live without severe, unremitting pain despite necessary veterinary care. Examples of animals who have been killed in the past but who are not irremediably suffering include animals with ringworm, mange, URI, arthritis, and labored breathing.")

<sup>21</sup> [ ] interview at 2.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 4-5.

Many rescue groups confirmed "the culture of disregard" that Neiswender observed at the shelter. The shelter not only neglected animals, but it also refused to work with rescue groups. In fact, the shelter was a prime example of why the rescue access provision was so essential despite the common myth that shelters would never act irrationally and immorally by wasting taxpayer money and killing and disposing of animals that rescue groups were willing to save.<sup>25</sup> According to Neiswender, staff members "were just completely out of line. They were not running a shelter. They were just running a euthanasia machine."<sup>26</sup> "The minute we bring up well, you could do it differently, do it this way, [they would say], 'oh we couldn't do that...'"<sup>27</sup> Neiswender concluded, "It was always something. They just wanted to kill 90% of the animals coming through the front door. They saw them as vermin. They saw them as a nuisance."<sup>28</sup>

The rescue access provision of the Hayden Law entirely changed the way Kern County shelter was run. Not only did it mandate collaboration between the shelters and rescue groups, but it proved to be a turning point in shelter-rescue relationships and, perhaps more importantly, how the shelter viewed its obligations to the animals. In fact, in the aftermath of the Hayden Law, as shelters began to work cooperatively with rescue groups, rescuers began to notice improvements at the shelter, such as the removal of the "green gate," which previously blocked rescue groups and the public from seeing the vast majority of the animals housed at the shelter, the purchase of brand new kennels which were properly sealed, and the establishment of protocols on how to properly wash down the kennels with disinfectant.<sup>29</sup> Neiswender adds that

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<sup>25</sup> Neiswender, *supra* note 8, at 4.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5.

there was also "a higher level of staff responsiveness [and] better vets," which led to improved medical care for the animals.<sup>30</sup>

Animal rescuers have also noticed the difference. A Kern County rescue group which had no success trying to save animals prior to the Hayden Law stated that the shelters are much improved: "Overall you have better animal rescue numbers [and though shelters] still play favorites, animal control has done a big turn around."<sup>31</sup> Another nonprofit rescue group comments that, "Pressure from the community didn't work," but the Hayden Law "did open doors, and over the years it's become much easier... [C]ooperation is much better."<sup>32</sup> Brad Jensen, a shelter investigator who founded ShelterTrak and independently tracks and publishes statistics on public shelters,<sup>33</sup> notes that the number of cats and dogs rescued at Kern County immediately started to increase from zero before Hayden was implemented to over 1200 cats and 2500 dogs annually.<sup>34</sup>

As Jensen comments, "more shelters are releasing animals rather than killing them," and relying on the Hayden Law to justify investing resources to rehabilitate animals.<sup>35</sup> As a result, the Hayden Law has had the added benefit of allowing rescuers to save "less desirable" animals from shelters, such as animals who are elderly or sick or who show signs of correctible behavior problems. Jensen explains, "The law allows [rescuers] to get animals that they normally wouldn't

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<sup>30</sup> *Id.*

<sup>31</sup> [ ] Interview at 2.

<sup>32</sup> [ ] Interview at 2.

<sup>33</sup> *Tracking The Progress of Our Animal Shelters*, ShelterTrak, available at <http://sheltertrak.com>.

<sup>34</sup> *See, e.g., infra* Figure 1 (dogs) and Figure 2 (cats). These figures are graphs showing adoption and rescues from the Kern County Animal Shelter in the months following Neiswender's intervention. Although the adoption numbers remained relatively flat during that time, the number of rescued animals improved dramatically.

<sup>35</sup> Jensen, at 2.

be able to. Before, if a shelter deemed an animal 'unadoptable,' [the animal] was euthanized. Now, because of the mandatory holding period and rescue provisions, if you ask they have to give the animal up."<sup>36</sup> Ultimately, Jensen believes that the Hayden Law "forces shelters to do the right thing."<sup>37</sup> Even those rescue groups that were fortunate enough to already have "good relationships [with shelters] prior to Hayden" assert that they have "used the protection of the law for more access."<sup>38</sup>

#### B. Recognition That All Species of Animals Are Worthy of Humane Treatment

It is not just dogs and cats who benefit from the Hayden Law's rescue access provision. The Hayden Law added Section 31753 to the California Food and Agricultural Code, requiring that any "rabbit, guinea pig, hamster, pot-bellied pig, bird, lizard, snake, turtle, or tortoise... be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit... adoption organizations as provided for cats and dogs." Thus, Section 31753 also makes clear that the rescue access provision guaranteeing that nonprofits can rescue animals prior to their killing also applies to small animals in addition to cats and dogs. In fact, Section 31754(a) goes one step further and expands the category of protected animals to "*any* animal relinquished by the purported owner that is of a species impounded by public or private shelters." The Code now mandates that these animals also "shall be held for the same holding periods, with the same requirements of care,

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> [ ] Interview at 2.

applicable to stray dogs and cats . . . and shall be available for owner redemption or adoption for the entire holding period."<sup>39</sup>

A California-based nonprofit rabbit rescue group which rescues about 900 rabbits a year comments that while "rabbits are the third most popular pet" after dogs and cats, "most shelters don't know how to provide adequate shelter for them."<sup>40</sup> A representative of the group notes that, "There are differences between proper handling of rabbits than cats and dogs,"<sup>41</sup> and that especially prior to the passage of the Hayden Law, there was a problem with shelters not giving "the same care, space, attention, and advertising of rabbits as they do with dogs or cats."<sup>42</sup> The group goes on to observe that now, "The Hayden law benefits us because at least shelters are aware that rabbits are covered. We often need to bring it to their attention, but at least the law puts rabbits on equal footing with other shelter animals."<sup>43</sup> The group confides though that, "It still takes someone to stand up for the animals at these shelters," and sometimes rescuers "ha[ve] to quote the Hayden law to make sure the shelters hold the rabbits for an adequate time."<sup>44</sup>

"As a result of the law," the rescue group's job has become much easier in that they are able to "work [cooperatively] with the shelters."<sup>45</sup> Under the Hayden Law, " there was a system

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<sup>39</sup> Cal. Food & Agric. Code, Section 15, § 31754(a).

<sup>40</sup> [ ] Interview at 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* at 1.

<sup>44</sup> *Id.* at 1-2.

<sup>45</sup> *Id.* at 1.

set up where the shelters contacted the rescuers."<sup>46</sup> In addition, now the group typically receives at least 48 hours to pick up rabbits that are scheduled to be killed.<sup>47</sup>

Another rabbit rescue group similarly stresses the importance of a law that places cats, dogs, and small animals on the same footing. Thus, the fact that the Hayden Law establishes mandatory rescue access for small animals as well as cats and dogs has helped shelters, rescues, and the general public understand that small animals deserve a chance at life as well and helped create a more vibrant and professional small animal rescue effort. As a result, more rabbits and other small animals are getting out of shelters alive.

## II. Indirect / Unanticipated Positive Effects of the Hayden Law

### A. Mandating Collaboration

When shelters refuse to work with rescue groups in California, choosing to kill animals that could be saved, making staff aware of the Hayden Law is often enough to cause a shelter to change its behavior. As one nonprofit rescue group explains, "Up until the Hayden law, we [didn't have] any leverage."<sup>48</sup> The group notes that simply informing shelters of their obligations under Hayden can change the status quo. Similarly, one of the largest and most active rabbit rescue groups in the San Francisco Bay Area adds that, "No matter how friendly we all are, it helps to have that law in place. A relationship built for ten years can go down the drain right away. People change at the shelters constantly, so having the law as back up is very critical."<sup>49</sup> Although rescue groups consistently stated that the best policy is to maintain good relations with shelters, they also agreed that the Hayden Law is very important because it guarantees that they

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 1-2.

<sup>48</sup> *Id.*

<sup>49</sup> [ ] Interview at 3.

have access to shelter animals regardless of how cooperative the shelter staff are. In the past, rescue access was contingent on the arbitrary discretion of those in power. It is now a legal duty.

A long-time rescuer observes that historically there was great variation in how willing public shelters were to work with nonprofit groups: "Some are better than others, some more proactive, some more difficult... Some still think they're [role is to] house and kill [animals]." As a result, the rescuer, who manages a transport to rescue program and oversees the transport of about 2,000 dogs a year from high kill shelters to rescue groups, has had several experiences in which she was forced to rely on the Hayden Law. In one example, she approached the leadership of the Kern County shelter and discovered that just informing them of the mandates of the Hayden Law was sufficient to persuade the shelter to comply with its legal obligations.<sup>50</sup> In another example, the rescuer encountered problems with the municipal shelter in Hollister, California, which she notes "is not rescue-friendly" and which embraces the conventional philosophy that shelters were places that "house[d] and kill[ed]" animals.<sup>51</sup> However, the rescuer recalls: "I went in and described Hayden and told them to work with me or I'm going public." The shelter immediately began meeting its obligations, allowing the rescue group to save animals that would have been killed in the past.<sup>52</sup>

Brad Jensen of ShelterTrak also reports that animal advocates have successfully campaigned for positive change at noncompliant shelters because of the Hayden Law.<sup>53</sup> In one example, the city of Oceanside decided to merge its public shelter with the private San Diego

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<sup>50</sup> [ ] Interview at 1.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> *Id.*

<sup>53</sup> *News and Views*, ShelterTrak, available at: <http://sheltertrak.blogspot.com>.

Humane Society ("SDHS"). Supporters believed the merger would be beneficial for animals, because SDHS had vast financial resources, "access [to] specialized veterinarian treatment and extra space to house animals at [its] San Diego [] campuses."<sup>54</sup> However, volunteers at the Oceanside facility soon reported that, "The policies [of the Oceanside facility] seemed to change radically" after the merger.<sup>55</sup>

An animal advocate who had volunteered at the Oceanside facility for nine years prior to the merger observed that many dogs who had passed behavior tests while at Oceanside "were taken to the San Diego Humane Society and never seen again."<sup>56</sup> According to volunteer reports, the SDHS was transferring animals "to a building that no one had access to, holding the animals for five days, and then not reporting what happened to the animals afterwards" and refusing to work with rescue groups, thereby circumventing the rescue access provision of the Hayden Law.<sup>57</sup>

The rescue community sent SDHS a "cease and desist" letter for "not allowing the[] animals to be adopted out, but [ ] holding them where they cannot be seen by the public nor seen

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<sup>54</sup> Promise Yee, *Merger Brings Changes For Humane Society*, The Coast News, March 5, 2010, at 1, *available at*: [http://thecoastnews.com/view/full\\_story/6468803/article-Merger-brings-changes-for-Humane-Society?](http://thecoastnews.com/view/full_story/6468803/article-Merger-brings-changes-for-Humane-Society?).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Jensen, at 1.

by rescue organizations.”<sup>58</sup> As a result, the SDHS changed its policies to begin working with rescue groups.<sup>59</sup>

A former Commissioner of the Board of L.A. Animal Services observes that, "Sometimes educating the shelter is enough."<sup>60</sup> In one particular instance, this effort paid off with the municipal shelter in Riverside County, "where there was a poodle the shelter intended to kill rather than release to rescue."<sup>61</sup> The commissioner recounts that she "quoted the Hayden provision" to the shelter employees.<sup>62</sup> "It took a lot of advocacy, and they named all kinds of excuses."<sup>63</sup> But, she adds, "thanks to the Hayden Law," the group saved the dog.<sup>64</sup> A rabbit rescue group affirms that, "It takes someone to stand up for the animals at these [less compliant] shelters... We need to point out to the shelter the components of the Hayden law. Then the shelter usually responds well."<sup>65</sup>

Thus, having a law that rescuers can rely on which mandates that animals are given to them is a very powerful tool to save lives. In practice, shelter staff who are informed of their legal obligations tend to change their behavior. Finally, the threat of a nonprofit rescue going

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<sup>58</sup> [ ] Interview at 1.

<sup>59</sup> Ray Huard, *Region: Humane Society Resolves Dispute Over Euthanizing Strays*, North County Times, March 20, 2010, at 1, available at: [http://www.nctimes.com/news/local/oceanside/article\\_f6cebf73-52d8-56d6-b8ef-318305c65b9b.html](http://www.nctimes.com/news/local/oceanside/article_f6cebf73-52d8-56d6-b8ef-318305c65b9b.html).

<sup>60</sup> [ ] Interview at 1.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> [ ] Interview at 2.

public to reveal the way shelters run their operations is all the more persuasive when the Hayden Law makes those practices illegal and not just morally reprehensible.

B. Public Awareness/ Media

Another indirect positive impact of the Hayden Law's rescue access provision is that it has greatly increased public awareness of the problems at many shelters, galvanized public support for holding shelters to a higher standard, and consequently, changed the culture at many shelters from one of apathy to responsiveness. In the aftermath of the Hayden Law, one rescuer describes the substantial improvement at the Kern County shelter, which she attributes to the increased public scrutiny and media attention on shelter operations:

Overall, the shelter has been much better because of the media. Animal control has done a big turn around, but much of it was public pressure. There have been some prominent newspaper articles that have done a great service to animal rescue efforts.<sup>66</sup>

The rescuer goes on to note that not only does "there seem to be more public awareness, support, . . . [and] publicity," but also, "if there is anything wrong, there is the threat of the media reporting on it."<sup>67</sup> Because rescue groups now have a legal right to save animals in California, they no longer have to keep quiet about the abuse and mistreatment they witness in the shelter for fear of losing their access rights. As a result, they have become the "eyes and ears" of the community by going public, forcing poorly performing shelters to treat animals better, and leading to the removal of abusive staff.

Thus, even apart from imposing legal duties on shelters to improve conditions for animals and to work with rescue groups, the Hayden Law has also generated public support and media

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<sup>66</sup> *Id.* at 2.

<sup>67</sup> *Id.* at 1.

publicity for the plight of shelter animals, which in turn, has pressured shelters to implement positive changes.

### III. Limitations in the Actual Implementation of the Rescue Access Law

Because some of the ways shelter would attempt to circumvent the law could not be anticipated, some of its key terms were left undefined by lawmakers. This has led to some problems in its implementation. For example, many rescuers complain that animal shelters have manipulated the definition of “irremediable suffering” in order to deny animals to rescue groups. The term “irremediably suffering” is a significant phrase, because it is the primary exception carved out under the Hayden Law’s rescue access provision: “*Except as provided in Section 17006, any stray dog that is impounded pursuant to this division shall, prior to the euthanasia of that animal, be released to a nonprofit . . . if requested by the organization prior to the scheduled euthanasia of that animal.*”<sup>68</sup> Section 17006 goes on to specify that, “Animals that are *irremediably suffering* from a serious illness or severe injury shall not be held for owner redemption or adoption.”<sup>69</sup> One rescuer notes, “If these animals are truly suffering *and* it is truly irremediable, then yes perhaps they should be euthanized. However, shelters manipulate [the term] to kill animals.”<sup>70</sup> The statute fails to define exactly what is meant by “irremediably suffering” other than limiting it to situations in which the animal has “a serious illness or severe injury.”

Rescuers note that the degree to which shelters comply with a strict definition of “irremediably suffering” often depends on the number of rescue organizations that work

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<sup>68</sup> Cal. Food & Agric. Code § 31108 (b) (emphasis added).

<sup>69</sup> Cal. Food & Agric. Code § 17006 (emphasis added).

<sup>70</sup> [ ] Interview at 1.

regularly with the shelter, and thus, how much public scrutiny the shelter is under.<sup>71</sup> A complicating factor is that shelters with limited budgets often interpret "irremediably suffering" to encompass any condition that would be costly to treat even if the rate of survival with treatment is very high. As the rescuer points out, "Shelters should not be allowed to deny rescue groups sick or injured animals with treatable conditions when rescue groups have the ability and willingness to provide veterinary care." In fact, it is illegal for shelters to do this. The Hayden Law includes three identically worded public policy sections that are supposed to guide interpretation of ambiguous statutory language.<sup>72</sup> Those public policy sections explicitly state that it is "the policy of the state that no adoptable animal should be euthanized" and that "no treatable animal should be euthanized"; "a treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts."<sup>73</sup> Thus, shelters cannot use their discretion to define "irremediable suffering" in ways that run counter to the public policy statutes, such as killing adoptable animals for reasons of space.

Although some shelter managers continue to inappropriately rely on the "irremediable suffering" phrase to deny rescue groups animals, the Hayden Law has still empowered rescuers to speak out in these instances, because shelters no longer have the ability to retaliate against them. One rescuer tells the story of how her efforts to challenge a shelter's abuse of power resulted in the successful release of a dog she was trying to save: :

I was trying to save a Dane mix who had been hit by a car and was scheduled to be [killed... the shelter] refused to have her medically evaluated, and I was denied [the Dane] because she might have internal damage. [Yet] I had seen the dog prior, and she was scuffed up, but looked otherwise unharmed. I routinely care for injured dogs and let [the shelter] know I did not care what condition [the Dane] was in, because she would be

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<sup>71</sup> [ ] Interview at 1.

<sup>72</sup> Cal. Civ. Code § 1834.4; Food and Ag. Code § 17005; Penal Code § 599d.

<sup>73</sup> *Id.*

going immediately to our vet for care. [But] it still took three hours [of arguing]... before they finally gave me the Dane.<sup>74</sup>

The group representative adds that the six month old Dane mix puppy turned out to be "a bit scuffed but otherwise in perfect shape" and "a tail wagging sweetheart who was easily adopted."<sup>75</sup>

Despite these problems in shelter managers' acceptance of the letter and spirit of the Hayden Law, every interviewee agreed that the rescue access provision has successfully accomplished its objective of empowering rescue groups and increasing the number of lives saved among California's shelter population. The law represents a statement by the people of California that the lives of animals are important and worth protecting. Although there continue to be opportunities to improve the effectiveness of the law, the general consensus is that the conditions of the animals in shelters and the relationships between shelters and rescue groups are substantially better than they were twelve years ago, prior to the Hayden's Law's enactment.

#### IV. Comparison To States That Do Not Have Rescue Access Laws

In states with no equivalent of the rescue access provision of the Hayden Law, rescuers have a much more difficult time trying to save lives and improve shelters; in the absence of any legal mechanism to require that shelters work with rescue groups, rescuers are fearful of the shelters' unchecked power to retaliate against them. The result is that animals who are neglected and even abused in shelters are more likely not to be helped, and animals who would otherwise be rescued end up being killed.<sup>76</sup>

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<sup>74</sup> [ ] Interview at 2.

<sup>75</sup> *Id.*

<sup>76</sup> The State of Delaware recently passed a comprehensive shelter reform law, modeled on the Hayden Law and the No Kill Advocacy Center's "Companion Animal Protection Act," which includes a rescue access provision.

According to a rescue group in Middleton, New York, the local shelter has killed animals it offered to take. The pervasive problem of shelters refusing to release animals to rescue groups as well as high profile cases of this conduct in New York state led to the introduction of a statewide bill to mandate nonprofit rescue access. The statewide bill would have established the equivalent of the "rescue access" provision of the Hayden Law in New York to ban shelters from killing sheltered animals if a qualified IRC §501(c)(3) rescue group was willing to save them.<sup>77</sup> Off the record, most rescue groups interviewed enthusiastically supported it, including a No Kill shelter that commented, "In an ideal world you wouldn't need [such a] law, but [it] performs a function that needs to be performed, which is getting rid of the arbitrary reason to kill a dog instead of giving the dog to us."<sup>78</sup> Indeed, a statewide survey of rescue groups found that 71% of respondent rescue groups were being turned away while those shelters then killed the very animals the rescuers were willing to save. It also found that 43% of all rescue groups experienced retaliation from shelters after expressing concerns about inhumane treatment of the animals, with over half (52%) allowing the neglect to continue because they were afraid to speak out for fear of retaliation.<sup>79</sup>

Rescuers in other states without rescue access laws have similarly experienced problems with retaliation and the arbitrary denial of access to animals at local public shelters. A cat rescue group in Seattle, Washington reports that, "what's really frightening in dealing with [animal control] is that there is no protocol. There is no agreement. They could refuse us at any time."<sup>80</sup>

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<sup>77</sup> [ ] Interview at 1.

<sup>78</sup> [ ] Interview at 4.

<sup>79</sup> "New York State Survey Shows Animals Being Killed Despite Rescue Alternative," No Kill Advocacy Center, April, 2010.

<sup>80</sup> [ ] Interview at 1.

Although this group is allowed to rescue, some of the animal control officers of the county shelter have made the “implied threat that what we're doing is wrong somehow” because it violates county kenneling regulations. Even though the rescue group has reviewed the regulations and believes the threats are unfounded, they are nevertheless “pretty careful”<sup>81</sup> and “feel like [they] are walking a tight line.”<sup>82</sup>

In fact, the rescue group was threatened with retaliation because rescuers had seen “cats who had been very sick in cages [and] not being fed, and [they]’d been associated with people who’d been critical of the shelter.”<sup>83</sup> “They don’t like us being critics of the shelter, protesting conditions, looking at statistics, and that type of thing, so . . . we were asked to sign an agreement that said that we would not complain or criticize the shelter publicly.”<sup>84</sup> One rescuer remembers that, “Some people at that point quit because they didn’t want to sign.”<sup>85</sup> In other words, members of the rescue group were asked to make a choice between saving animals and keeping quiet when they witnessed inhumane conditions.

Claire Davis, a Seattle attorney and animal advocate who has been involved for the past three years in an effort to reform local animal care and control, shares the frustrations and concerns of rescuers.<sup>86</sup> Davis describes the poor conditions in King County public shelters, which have been detailed in several expert reports. One such report concluded that, “The animals received no basic care, food or water, lacked vet care, vaccinations, and did not have clean cages.

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Claire Davis Interview at 1.

Many animals got sick and were allowed to die in their cages. There was poor outreach, adoption problems, cruelty and neglect investigations, and bad relations with rescue, volunteers and fosters."<sup>87</sup>

Moreover, Davis notes that while rescue groups have been upset about the deplorable conditions at King County public shelters, they are reluctant to criticize the shelter for fear of retaliation. Davis observes that, "[Local] rescue groups are very afraid to criticize [KCACC], because they believe if they do, they will be shut off and will not be allowed to rescue animals from the shelter."<sup>88</sup> Davis also comments on the unpredictability of working with shelter staff: "Nothing is consistent, it depends on the person and the day. Some officers are good, but others hold grudges."<sup>89</sup>

As a result of her work in animal shelter reform in Washington, Davis is a strong advocate of implementing a rescue access law that would require shelters to transfer animals to IRC §501(c)(3) rescue groups. The type of law that Davis envisions is a "mini-version of the Hayden Act enacted at a county wide level" which would require KCACC "to hand over any animal that cleared its stray hold period [] to rescue" rather than kill the animal.<sup>90</sup> The public shelter would also be required "to circulate lists of animals that were available for rescue to rescue groups" and "to provide an avenue for rescue groups to complain" to a higher official if they were refused access to any animal.<sup>91</sup>

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 2.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

## V. Are Rescue Access Laws Necessary In States Outside Of California?

### A. Antagonism Between Shelters And Rescue Groups

Members of the general public are frequently under the illusion that public shelters would never need a law that legally requires them to transfer animals to qualified rescues instead of killing them, because *not* to do so simply defies logic. However, the consistent response from rescue groups in Washington, New York, and California before the implementation of the Hayden Law, is that although the reasons for antagonism between shelters and rescue groups vary, the common result is that shelters frequently make it difficult or impossible for rescue groups to save animals.

Brenda Barnette, a veteran of the animal rescue movement in California as well as Washington, offers insight into the mentality of many public shelters. She confides that in the late 1990s, before the Hayden Law's rescue access provision was passed, many public shelters had stereotyped all nonprofit no-kill shelters as irresponsible and refused to relinquish animals into their care: "The local public shelters wouldn't let us have animals. They said no, you no-kill shelters just take the animals and let them languish in their cages – death is better."<sup>92</sup>

Barnette, who has extensive experience with the tensions that can develop between nonprofit rescue groups and public shelters, first served as Executive Director of Pets In Need in Redwood City, then as CEO of the Animal Rescue Foundation in Walnut Creek, and finally as CEO of Seattle Humane Society in Seattle.<sup>93</sup> Most recently, she was appointed General Manager of the Los Angeles City Department of Animal Services.<sup>94</sup>

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<sup>92</sup> Barnette, at 1.

<sup>93</sup> *Id.* at 2.

<sup>94</sup> Rachel Kruer, *Mayor Villaraigosa Appoints New GM Of Animal Services*, City of Los Angeles Press Release, June 15, 2010, at 1, available at [http://mayor.lacity.org/PressRoom/PressReleases/LACITYP\\_010586](http://mayor.lacity.org/PressRoom/PressReleases/LACITYP_010586).

While Barnette was at Pets In Need, she remembers the strong resistance to the no-kill philosophy put up by the leadership of the Peninsula Humane Society ("PHS"), a traditional kill shelter. Barnette recalls that the director not only toured "the country teaching people how to euthanize animals," but that in a chilling meeting, she and her staff "were vehement, just vehement . . . that all no-kill shelters were the same. We all stock piled animals. We all just crammed them in, didn't take good care of them, and let them die these slow, painful deaths."<sup>95</sup> Barnette comments that the irony was that Pets In Need always "had an open door so that you could come and see [the conditions of the shelter] anytime you wanted to, but that didn't help."<sup>96</sup> In fact, the antagonism towards no-kill rescues was so strong that even after PHS hired a new director, when Barnette had lunch with him, he continued to expound conventional views, arguing that, "If [animals] can't be adopted out of our shelter, they're not going to be adopted out of yours."<sup>97</sup> Barnette had retorted that, "That's not true, because people go to different shelters for different reasons . . . . Some people go to both of our shelters, some people will only go to yours and some will only go to mine, so what's the problem with giving it a try and letting some [animals] come to me."<sup>98</sup> Barnette concludes, "And so at that point it was just critical that the Hayden law get passed."<sup>99</sup>

Other rescuers also shed light on why tensions can build between shelters and rescue groups, making a rescue access provision critical to lowering killing rates. A long-time rescuer explains, "Animal Control carries a lot of power in [the state capitol] and a lot of clout and some

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<sup>95</sup> Barnette, at 1.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

of them are just bullies."<sup>100</sup> Another rescuer adds, "Some shelters still don't get it that rescues can be a valuable resource for shelters that are willing to work with them."<sup>101</sup> Still another rescuer has even dealt with shelters who actively thwart her ability to rescue animals. She explains that the county shelter in her community has "interfered with my ability to conduct rescue work, often raiding my public adoption events and giving me tickets for having an 'illegal kennel' at those events."<sup>102</sup> The rescuer recounts that all these tickets were later dismissed when she challenged them and concludes that, "It appears [the shelter] did not want any other animal group to be conducting rescue work."<sup>103</sup>

Another rescue group observes that shelters often "go through cycles" of being rescue friendly depending on the shelter's leadership.<sup>104</sup> Its local shelter "used to have more cooperative people" and "used to be open to rescue," but now is "more about keeping control."<sup>105</sup> In another case, the group recalls that a shelter suddenly became "controlling and ridiculous" due to a staff change, "stopped [her] from going in the back room," and began killing rabbits she was willing to rescue.<sup>106</sup> Yet prior to the staff change, this same shelter "recognized a rescue person as a partner, working to make the [shelter] better and help [animals]."<sup>107</sup> The group has learned that a

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<sup>100</sup> [ ] Interview at 2.

<sup>101</sup> *Id.*

<sup>102</sup> [ ] Interview at 3.

<sup>103</sup> *Id.*

<sup>104</sup> [ ] Interview at 1.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 2.

<sup>107</sup> *Id.*

shelter can begin to shut out rescues if just "one person leaves or gets hired, and it [undermines] years of work."<sup>108</sup>

Another reason why antagonism can build between shelters and rescue groups is that there is a difference "in opinion of wh[o] should and should not be rescued."<sup>109</sup> They explain that, "Some shelters say that [we] shouldn't waste [our] resources on [what they consider to be] an unadoptable rabbit when there are plenty of adoptable rabbits that are in the shelters and getting euthanized."<sup>110</sup> Yet the group feels, "It's not really their job to make that decision."<sup>111</sup>

The group continues that other shelters simply feel that a "rescue is more of an enemy than a friend," that unfortunately "politics are being used," and when that happens, "animals end up dying."<sup>112</sup> They feel that there are a "fair number of persons who are at shelters who shouldn't be. [They are] in there for power."<sup>113</sup> In addition, there can be problems "when you have a shelter person who comes in, doesn't understand how to use rescue groups, and doesn't give credit to rescue and what rescue can do."<sup>114</sup>

#### B. Fear of Retaliation Inhibiting Work Of Rescue Groups

Aside from the emotional toll on rescuers, the fact that many rescue organizations cannot operate effectively due to retaliation from shelters only reaffirms the need for rescue access laws in states outside of California. In New York, for example, rescue groups state that the lack of a

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 1.

<sup>113</sup> *Id.* at 2.

<sup>114</sup> *Id.* at 3.

rescue access law has caused many of them to suffer for criticizing shelters publicly. One rescue group notes that shelters will refuse to release animals to rescue groups who publicly complain about inhumane conditions or even worse, they will intentionally kill animals that these rescue groups request as retribution. In fact, one rescue group recalls that during "a conference call . . . among the rescues and one of the sponsors of a [shelter-access] law, we were told right at the beginning that there weren't that many rescues on the call because they were all afraid of being retaliated against."<sup>115</sup>

Similarly, a Washington-based rescue group feels that the fear of retaliation has impacted its rescue work. One member of the group explains, "I've been careful in not being at public protests, and not signing my name to public condemnations of the shelter."<sup>116</sup> In addition, the rescuer notes that the uncertain climate that the fear of retaliation creates has made it difficult for rescues to recruit new volunteers.<sup>117</sup>

Although the group has considered not working with the county animal control shelter based on the treatment it has received, the group perseveres for the sake of the animals: "What it comes back to is that we know that . . . cats will die or suffer if we're not involved."<sup>118</sup>

The group feels that a rescue access law like the Hayden Law would be very beneficial in Washington, because, "It'd certainly enforce a behavior change," and make working with the shelter much easier.<sup>119</sup>

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<sup>115</sup> [ ] Interview at 6.

<sup>116</sup> [ ] Interview at 4.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 5.

## VI. Hurdles to Overcome in Passing Rescue Access Laws in Other States

Generally, rescuers in states that do not currently have rescue access laws, such as Washington and New York, agree that there would be hurdles that would have to be surmounted before rescue access laws could be passed. When the law was considered for the first time in California and when it was considered in New York, some objected that rescue groups would hoard animals and that dangerous dogs would be released to the public. Yet, there is no evidence from California that rescue groups hoard animals or that dangerous dogs are being released to the public as a result of the rescue group access law.

According to Taimie Bryant, it stands to reason that there is no established causal link between the rescue group access provision and hoarding.<sup>120</sup> First, there are many low or no-cost sources of animals; there is no need to pay shelter adoption fees for the purpose of acquiring animals.

Second, most hoarding situations involve individuals who take on too many animals; the rescue groups to which California shelters must release animals are qualified IRC section 501(c)(3) rescue and adoption groups. Such groups are composed of networks of individuals run by boards of directors who have established procedures for getting animals the care they need and adopted into homes. In order to obtain IRC § 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 § 501(c)(3) status, rescue and adoption groups must abide by the law, including

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<sup>120</sup> Bryant, *supra* note 2.

anticruelty laws. Moreover, qualified rescue groups risk loss of their ability to attract the 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. In other words, there are plenty of safeguards in place by virtue of IRS requirements for animal rescue and adoption groups to receive and maintain an IRC § 501(c)(3) status.

A rescue group access law does not expose animals to undue risk of hoarding because animal control entities have power to investigate where there is probable cause that animal abuse and neglect is occurring. In fact, there is less evidence of poorly performing rescue groups resulting from the access law than there is evidence of antagonistic animal control agencies' abusing their investigative powers in order to retaliate against rescue groups. Brad Jensen of ShelterTrak notes that some Los Angeles shelters continue to insist that they "will not release [animals] to certain IRC §501(c)(3)s, because they're supposedly investigating a rescuer."<sup>121</sup> However, in reality, these shelters have lodged unfounded allegations against rescuers who have publicly criticized them. Moreover, there is "no disclosure regarding [the purported] investigation[s] even after a full year."<sup>122</sup> Shelters who abuse their investigative power in this way effectively strip legitimate IRC §501(c)(3) rescues of their right to rescue *any* animal on a shelter's euthanasia list per the mandate of the Hayden Law.

Similarly, there are few risks of dangerous dogs being released to the public simply because of a rescue group access law. According to Bryant, rescue groups are usually better judges of whether an animal is aggressive and can be rehabilitated than are shelters. (add

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

cite)There is no evidence that such groups have less regard for public health and safety than shelters do or are inclined to make irresponsible decisions about animals. Indeed, rescue groups would suffer more legal and financial consequences than would government-run shelters if they take undue risks in adopting out animals who pose a genuine risk to public safety. Moreover, because of their life-saving missions, many rescue groups have qualified animal behaviorists on staff or within easy access so that animals receive appropriate evaluations, training and rehabilitation. Many shelters lack these resources and, therefore, make far worse decisions about animals' behavior than do rescue groups.

## VII. Conclusion

Overall, the past ten years of experience with rescue access law in California reveal that rescue groups can significantly increase the number of animals saved and significantly decrease shelter killing rates and expenditures. Barnette describes how many California shelters now have an efficient and transparent process for alerting rescue groups to animals that are about to be killed and facilitating their transfer out of the shelters:

The way it [] worked in California, the paperwork was on the front of the cage, and you could see what the day was that [the animals] came in and what the day was that they would go out, and if you were there the "day out" day, they were fair game. You could put them in your truck. I mean you had to get to the office and do the paperwork, but you could pull the paperwork and go to the office and say here's the stack we want.<sup>123</sup>

Although there continue to be resistant shelter managers, there have been many improvements as a result of the Hayden Law. Moreover, there is no evidence that the problems predicted by some when the law was considered, such as hoarding or exposing the public to dangerous dogs, has ever materialized.

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<sup>123</sup> Barnette, at 8.

Finally, the multi-state comparison reveals that the work of rescue groups in states without rescue access laws is being substantially impeded and that animals are needlessly dying. Thus, California's success story should serve as an inspiration to animal advocates, voters, and politicians in other states to rally together to guarantee the right of rescue groups to save shelter animals by enacting rescue access provisions like the Hayden Law. When asked what she might say to the legislators in other states who were deliberating whether to pass such a provision, Barnette responds, "The only humane thing to do is to pass it. I mean there's no other option. You can't depend on [shelter managers' and employees] clear thinking and goodwill."<sup>124</sup> Davis agrees, stating, "I think it's absolutely important... I think one element which is difficult to quantify is the constant fear that rescue groups live under that if they criticize the agency or don't get along with the animal control officer, their access will be shut off. Eliminating that fear will go a long way towards reforming a poor animal care and control agency."<sup>125</sup>

It will also go a long way to saving more lives.

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<sup>124</sup> *Id.* at 9.

<sup>125</sup> Davis, at 2.

Figure 1

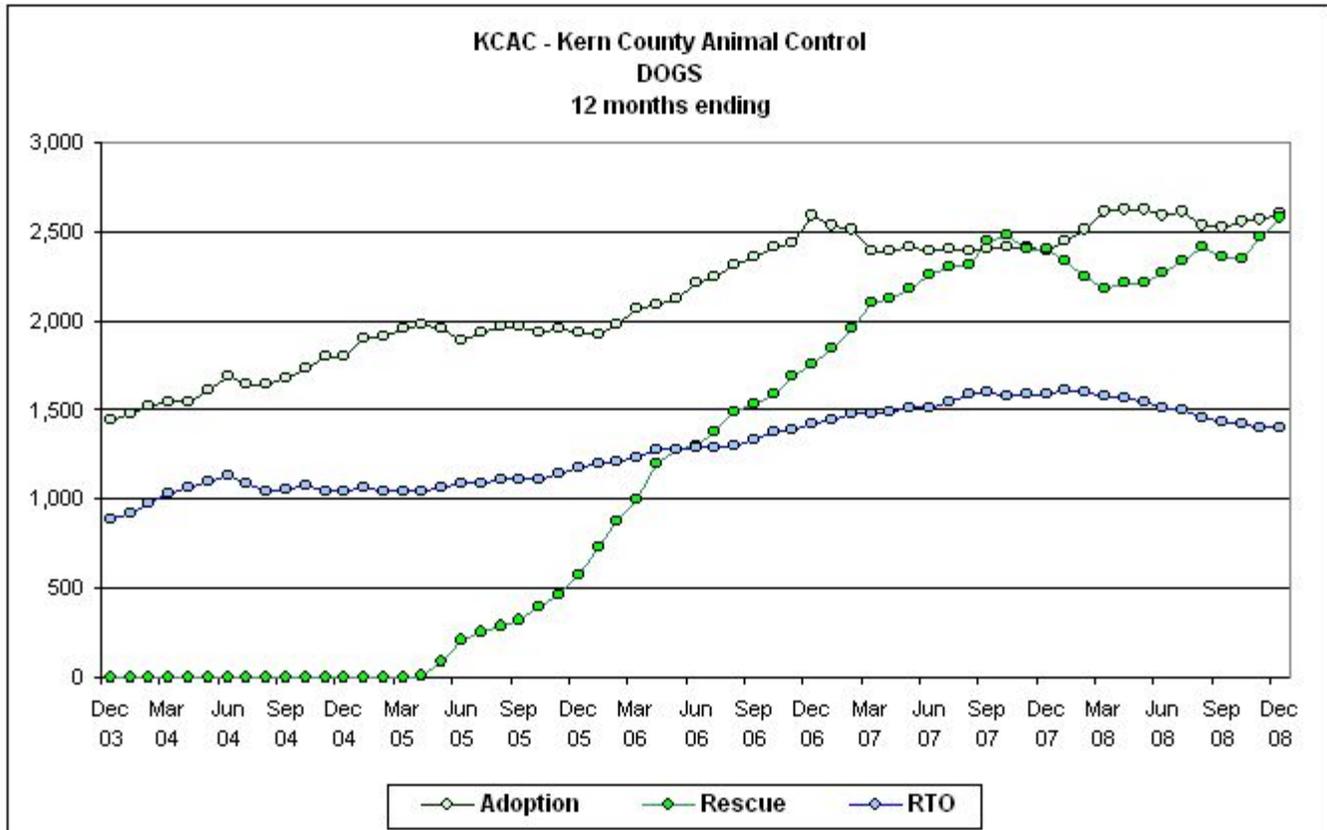


Figure 2

