



April 20, 2023

The Honorable Timothy S. Grayson
Chair, Assembly Committee on Banking & Finance
1021 O Street, Ste. 5510
Sacramento, CA 95814

RE: AB 554 (Gabriel) – OPPOSE

Chair Grayson:

Our organizations, representing California businesses engaged in the production, stewardship, conservation, and care of animals, write to **oppose Assembly Bill 554 (Gabriel)**, which would create a new right of action enabling Societies for the Prevention of Cruelty to Animals (SPCAs) and their humane officers to litigate alleged violations of “any law relating to or affecting animals” in the civil courts.

The Corporations Code sets an incredibly low bar for a group to incorporate as an SPCA, meaning that virtually any group could simply file new or restated articles of incorporation which would then authorize it to bring civil suits under the provisions of AB 554. As a result, AB 554 is ripe for abuse by extremist groups which are fundamentally opposed to production agriculture, fairs, zoos, and other practices involving the keeping or handling of animals, causing undue reputational and financial harm to such businesses.

To be clear, our organizations condemn animal cruelty, and firmly believe that individuals who have committed cruelty to animals should be prosecuted in the criminal courts. Fortunately, existing law comprehensively provides for such criminal prosecutions where credible evidence that laws “relating to or affecting animals” have been violated. Because this bill is likely to result in abuses of the civil justice system which will cause undue hardship to humanely-operated businesses while further burdening California’s civil courts, we must **oppose AB 554**.

I. AB 554 IS RIPE FOR ABUSE

The ease with which an organization may qualify as a “society for the prevention of cruelty to animals” under the Corporations Code renders AB 554 ripe for abuse. Under § 10400, an organization need only (1) incorporate or reincorporate as an SPCA (“specifically stat[ing] that the corporation is being formed pursuant to [§ 10400]”) and (2) be formed by at least 20 California citizens to be deemed an SPCA. Any entity so incorporated is then capable of bringing a suit under § 10404 (because that section permits an SPCA to proffer a complaint directly, an organization incorporated under § 10400 need not even undertake the additional procedural requirements of qualifying a humane officer under § 14502 prior to bringing suit).

This incredibly low bar for qualifying as an SPCA is ripe for abuse by extremist animal rights organizations which have long sought to disrupt, harass, and even shutter California businesses engaged in the production, stewardship, conservation, and care of animals. Nothing in the Corporations Code would even require a group incorporated as an SPCA to provide the typical

services associated with SPCAs, such as sheltering, treating, and securing adoption for abused animals. Simply by incorporating as an SPCA as detailed above, any group could avail itself of the new civil cause of action established under AB 554 to harass and besmirch any business engaged in the production, stewardship, conservation, and care of animals.

A. No procedural safeguards prevent bad actors' abuse of § 10404 in civil court

Prosecutions in criminal court under § 10404 have an important safeguard for the accused: the direct involvement of the state in advancing such prosecutions. The complaint must be proffered to a court or magistrate, and while an SPCA humane officer “may aid in the prosecution of the offender before the court or magistrate” (Corp. Code § 10404), that prosecution will still be brought by a government prosecutor on behalf of the People. In this context, prosecutors vet any allegations made by an SPCA or humane officer, ensuring both that a legally-cognizable ‘wrong’ has been perpetrated and that there is sufficient evidence to successfully prosecute the case.

State actors acting as a ‘buffer’ against ill-founded prosecutions would be absent in the filing of a civil complaint, however, rendering AB 554 ripe for abuse by ill-intentioned actors, including extremist animal rights groups. Well-funded organizations could bring spurious or frivolous claims of ‘abuse’ against humanely-operating livestock producers, zoos, fairs, and other businesses in an effort to tarnish their reputations, to force the expenditure of significant time and monetary resources in their defense, or to exact civil settlements from these businesses. Such plaintiffs need not win at trial on the legal merits of these cases; merely filing and pursuing a civil lawsuit can achieve their end of irreparably damaging businesses engaged in the production, stewardship, and care of animals.

B. AB 554 troublingly lowers the burden of proof for demonstrating violations of criminal statutes

As discussed above, AB 554 is likely to be weaponized by activists to bring lawsuits even where there is little to no hope of securing a verdict that the defendant is liable. However, in the event that cases are tried, AB 554 significantly lowers the bar for a finding that the accused is liable for animal abuse or cruelty. In criminal cases which may currently be brought under § 10404, the “beyond a reasonable doubt” standard applies. By allowing these cases to be brought in civil court, AB 554 would lower the plaintiff’s burden of proof to “by a preponderance of the evidence,” or simply more likely than not. Given the seriousness of the allegations made in any case brought under § 10404 – not only are allegations of animal abuse and neglect viewed as particularly egregious wrongdoings in society, but the underlying claims in such cases would usually be violations of *criminal* statutes found in the Penal Code – the criminal standard of “beyond a reasonable doubt” is the appropriate standard for proving such allegations.

II. AB 554 DOES NOT “CLARIFY” EXISTING LAW BUT RATHER CREATES A NEW RIGHT OF ACTION

According to a fact sheet for AB 554, the bill would merely “clarify the existing path for private enforcement of animal cruelty laws.” The fact sheet refers to existing Corporations Code § 10404 as ambiguous and asserts that that statute is “intended to give SPCAs civil enforcement power to prevent animal cruelty and other animal law violations.”

Far from merely “clarifying” existing law, however, AB 554 would newly grant SPCAs and their humane officers standing to bring suit in civil courts which California statute and the courts do not currently recognize.

A. Existing statute is clear that § 10404 only authorizes criminal complaints

Considered as a whole, Corporations Code provisions relating to SPCAs evince a clear legislative intent that an SPCA “or humane officer thereof” only have standing to “proffer a complaint...for the violation of any law relating to or affecting animals” in *criminal* court.

While § 10404 authorizes an SPCA or humane officer to proffer a complaint before any court or magistrate, §§ 14500-14505 detail how these entities may enforce violations of state or local animal control laws. Section 14504 enables “The governing body of a local agency” to “authorize employees of...societies for the prevention of cruelty to animals...who have qualified as humane officers...to issue notices to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for violations of state or local animal control laws.”

Importantly, Title 3 of Part 2 of the Penal Code is a title exclusively “Regarding *Criminal* Procedure” (*emphasis added*), and no provision of the Corporations Code authorizes an SPCA or its humane officers to issue notices to appear in *civil* court pursuant to the provisions of the Civil Procedure Code. **That the Legislature explicitly provided only a mechanism whereby SPCAs and humane officers could issue notices to appear in criminal court evinces a clear legislative intent that these entities only have standing to enforce the animal protection laws in those criminal courts.**

B. No caselaw precedent finds a civil enforcement mechanism under § 10404

At least one California appellate court has suggested that § 10404 *does not* confer upon SPCAs and their humane officers a private right of action in civil court. In *ALDF v. Mendes*, the 5th Appellate District noted that “there is in place an explicit and comprehensive legislative scheme for enforcement of anticruelty laws.... This... scheme for enforcement **in the criminal system of laws** for the protection of animals, including direct participation of... registered humane officers, **demonstrates a legislative intent that these laws not be enforceable through a private right of action in civil court.**”¹

AB 554’s sponsor has pointed to two cases – *Caru Society for the Prevention of Cruelty to Animals v. Anthony* and *Loy v. Kenney* – as authority for the proposition that courts have interpreted § 10404 as granting SPCAs a right to bring suit in civil court. Neither case provides precedential authority for the sponsor’s claim.

In *Caru*, the issue of standing appears to have been decided upon procedural grounds rather than upon the legal merits of Caru’s standing claim. When defendant Anthony failed to timely respond to plaintiff’s requests for admission (RFAs), the court granted plaintiff’s motions to deem the RFAs admitted and for summary judgement. “Based on these rulings, the court found as a matter of law

¹ *Animal Legal Defense Fund v. Mendes*, 72 Cal.Rptr.3d 553, 557-558 (5th App. Dist. 2008) (*emphasis added*).

that...Caru had standing to bring this action under Corporations Code sections 10400 and 10404.”² Perhaps due to the procedural nature of the court’s disposition, the court determined the opinion in *Caru* was “**NOT TO BE PUBLISHED IN OFFICIAL REPORTS,**” meaning under California Rules of Court rule 8.1115(a) the opinion may not be relied upon by courts or litigants for precedential value. Similarly, the Legislature ought not rely on the case to support the sponsor’s proposition that § 10404 confers such a right of action.

Loy was a trial court decision and provides no *precedential* authority in support of the sponsor’s claim that § 10404 confers upon SPCAs standing in civil court. Indeed, upon appeal, the Second District Court of Appeals declined to consider whether § 10404 confers such standing in civil court, instead resting its decision on the Consumers Legal Remedies Act and writing “Nor need we address whether Caru [SPCA]...had standing to bring this case. The preliminary injunction is valid irrespective of whether Caru is in or out of the case. For purposes of this appeal, Caru is just a spare plaintiff. No one argues otherwise. We express no view on the merits of these ancillary issues.”³

In short, **no legal precedent supports the claim that § 10404 confers upon SPCAs and humane officers standing in civil courts**, and cases such as *Mendes* have suggested that the only proper venue for cases brought pursuant to § 10404 are the criminal courts.

III. NO CIVIL CAUSE OF ACTION IS NECESSARY IN LIGHT OF EXISTING CRIMINAL AUTHORITIES

Proponents of AB 554 claim that an explicit private right of action in civil court is necessary because “There are a variety of reasons why government agencies may fail to enforce the law” in criminal court. Indeed, there are a variety of reasons why the State may *rightly* refuse to prosecute a claim proffered under § 10404 in the criminal courts: an SPCA or humane officer’s allegation may fail to properly state a legally-justiciable claim, there may be insufficient evidence upon which to bring a prosecution, etc. But where there is no such legal defect, existing law – Penal Code § 599a – is clear that when an animal abuse complaint is made “to any magistrate authorized to issue warrants *in criminal cases...* the magistrate *must issue...* a warrant directed to...any incorporated association qualified as provided by law, authorizing him” to search the property of and arrest the alleged abuser “and to bring that person before some court or magistrate of competent jurisdiction...to be dealt with according to law.”⁴

Indeed, the existence of § 599a – providing that magistrates *must* issue warrants and bring alleged abusers to court “to be dealt with according to law” – was part of the “explicit and comprehensive legislative scheme for enforcement of anticruelty laws” that led the *Mendes* court to reason that “these laws not be enforceable through a private right of action in civil court.”

Additionally, Corporations Code § 10405 relative to SPCAs and humane officers reinforces Penal Code § 599a, providing that “All magistrates, sheriffs, and officers of police shall, as occasion may require, aid any [SPCA], its officers, members, and agents, in the enforcement of all laws relating to or affecting animals.”

² Caru Society for the Prevention of Cruelty to Animals v. Anthony, Case No. A160487 (1st App. Dist., June 7, 2022) (*emphasis added*).

³ Loy v. Kenney, Case No. B315313 (2^d App. Dist., Nov. 17, 2022).

⁴ CAL. PENAL CODE § 599a (*emphasis added*)

IV. CONTRARY TO ITS STATED PURPOSE, AB 554 RISKS FURTHER BURDENING JUDICIAL RESOURCES

A fact sheet for AB 554 states that one aim of the bill is “conserving judicial resources.” In reality, the bill will do just the opposite, increasing the burdens upon the state’s civil justice system by establishing a new right of action for SPCAs and humane officers in the civil courts. Rather than the *status quo*, in which prosecutorial discretion may result in an ill-supported *criminal* claim avoiding the judicial process, for instance upon the prosecutor’s determination that no law has been violated or there is insufficient evidence to prosecute, an SPCA under AB 554 can simply bring that ill-founded claim to civil court. Additionally, given the lower bar for bringing and litigating a civil case and the likelihood for abuse, significantly more § 10404 cases are likely to arise in the civil courts than are currently filed in criminal courts.

Particularly in the wake of the COVID-19 pandemic, California’s criminal and civil courts already suffer a significant backlog of cases. In civil court, judges have sought to alleviate this strain on judicial resources by encouraging settlement conferences and other alternatives to standard litigation – alternatives which could further exacerbate the abusive filings discussed above as activist groups seek to exact punishing settlements from defendants.

CONCLUSION

Our organizations abhor animal cruelty and believe that such offenses should be properly prosecuted in the criminal courts. Because a comprehensive scheme for such criminal prosecutions already exists under Penal Code § 599a, Corporations Code § 10404, and other authorities, we believe AB 554 is wholly unnecessary. Further, because the bill would create a new civil right of action for SPCAs and humane officers ripe for abuse by ill-intentioned actors and which would further burden California’s strained judicial resources, we must respectfully **oppose AB 554** and urge your nay vote.

Sincerely,



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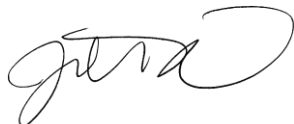
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