

No. B188723

CLERK'S OFFICE
COURT OF APPEAL - WEST LOS ANGELES DISTRICT
RECEIVED

2006 DEC 27 PM 4:01

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 7**

CALIFORNIA VETERINARY MEDICAL ASSOCIATION,
Plaintiff and Respondent,

vs.

CITY OF WEST HOLLYWOOD,
Defendant and Appellant.

Appeal From the Judgment of the Superior Court of California,
County of Los Angeles, Case No. SC084799
The Honorable James A. Bascue, presiding

**APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE
ANIMAL LEGAL DEFENSE FUND, THE ASSOCIATION OF
VETERINARIANS FOR ANIMAL RIGHTS, AND THE PAW PROJECT**

GIBSON, DUNN & CRUTCHER LLP
George A. Nicoud III, SBN 106111
Sarah E. Piepmeier, SBN 227094
One Montgomery Street
Suite 3100
San Francisco, California 94104
Telephone: (415) 393-8380
Facsimile: (415) 374-8452

GIBSON, DUNN & CRUTCHER LLP
Perlette Michele Jura, SBN 242332
Kahn A. Scolnick, SBN 228686
Vanessa C. Adriance, SBN 247464
333 S. Grand Avenue
Los Angeles, California 90071
Telephone: (213) 229-7121
Facsimile: (213) 229-6121

Attorneys for Amici Curiae
ANIMAL LEGAL DEFENSE FUND,
THE ASSOCIATION OF VETERINARIANS FOR ANIMAL RIGHTS,
AND THE PAW PROJECT

TO THE HON. DENNIS M. PERLUSS, PRESIDING JUSTICE:

Pursuant to Rule 13(c) of the California Rules of Court, Animal Legal Defense Fund, The Association of Veterinarians for Animal Rights, and the Paw Project (collectively “amici”) respectfully request leave to file the attached brief in support of the appellant in the above-captioned matter.

I. INTERESTS OF AMICI CURIAE

Animal Legal Defense Fund (“ALDF”) is a national non-profit organization involved in every aspect of animal law. Its mission is to “protect the lives and advance the interests of animals through the legal system,” and it has nearly thirty years of experience litigating cases and analyzing legal issues concerning animals. ALDF’s groundbreaking efforts to use the U.S. legal system to end the suffering of abused animals are supported by hundreds of dedicated attorneys and more than 100,000 members.

ALDF pursues its mission by, among other things, filing lawsuits to stop animal abuse, providing free legal assistance to prosecutors handling cruelty cases, and working to strengthen state anti-cruelty statutes. ALDF also publishes a 2,000-plus page compendium of animal protection laws in the United States. ALDF has been intimately involved with the development of legal scholarship and legal education in all areas of animal protection, and it supports legal journals and other legal publications in the area of animal law. In the civil justice system, ALDF has been instrumental in the analysis and evaluation of animal protection laws, and it has litigated some of the nation’s biggest animal cruelty cases. Courts are regularly interested in obtaining the perspective gained from ALDF’s almost three decades of experience in important questions of animal law.

AVAR is a nonprofit animal protection organization based in Davis, California. It is supported by approximately 3,000 veterinary members and approximately 10,500 contributors. AVAR was founded in 1981 by veterinarians who were concerned that the animals they were trained to care for, treat, and heal in veterinary school were routinely being subjected to cruel treatment, sometimes for the most trivial of reasons. They recognized that the veterinary profession, under the banner of “adequate or standard veterinary care,” often supported practices that were completely contrary to the well-being of animals. They also recognized that most existing veterinarians’ organizations, including the respondent in this case, the California Veterinary Medical Association (“CVMA”), promoted the business interests of veterinarians or other human interests, and they wanted to form an organization that would instead allow concerned veterinarians to advocate for and promote the interests of animals.

AVAR advocates that, just as physicians protect the interests and needs of their patients, so too should veterinarians protect the interests and needs of animals. AVAR seeks to educate the public and the veterinary profession about a variety of issues concerning animals and to secure higher ideals of humanity toward all animals. AVAR publishes and distributes a variety of educational materials and regularly participates in legislative efforts to pass laws that protect animals. AVAR’s veterinary members also regularly assist with cruelty cases and testify at legislative hearings on behalf of animals.

The Paw Project is a nonprofit corporation based in Santa Monica that was incorporated in 2004, and has roughly 2,500 members and supporters. It exists to promote animal welfare and increase public awareness about the crippling effects of declawing, to repair the paws of

animals that have been declawed, and to advocate for an end to the practice of declawing animals merely for human convenience. The Paw Project has a special interest in this case, as it initiated efforts that led to enactment of the Ordinance.

Amici believe that local animal cruelty measures such as the Ordinance are critical. Indeed, by passing the ordinance at issue on this appeal, the Citizens of West Hollywood joined a growing community around the world that recognizes declawing for non-therapeutic purposes as cruel. For example, the European Convention for the Protection of Pet Animals (hereafter “Convention”), which was first enacted in 1987, has banned declawing and other non-therapeutic procedures. The Convention specifically prohibits “surgical operations for the purpose of modifying the appearance of a pet animal or any other non-curative purposes...and, in particular:... (d) declawing and defanging.” (Convention, Art. 10 § 1(d)).

II. NEED FOR FURTHER BRIEFING

Amici are familiar with the issues before the Court and the scope of their presentation, and they believe that further briefing is necessary to provide a more detailed discussion of certain arguments that neither party currently addresses. As organizations that are devoted to animal law and protections for animals, amici are in a unique position to provide context for the dispute, which concerns, at a high level, whether a municipality may determine standards of behavior consistent with the values of the local community, or whether citizens are compelled to endure the commission of acts that they have determined to be cruel. Indeed, amici submit that the

ability of municipalities to self-regulate is one essential way in which society may reflect its evolving attitudes towards animals.¹

Amici will clarify the scope and purpose of both Business and Professions Code section 460 (“section 460”) and the Veterinary Medical Practice Act (“VMPA”), the construction of which raises significant policy considerations that have not been briefed by the parties. Specifically, amici will demonstrate that the Superior Court’s reading of section 460 is unsupported by the language, structure, scope, or purpose of that section. Amici will also explain the profoundly disturbing results that would follow if this Court were to adopt the Superior Court’s overly-broad interpretation of section 460, which has been read to trump a local ordinance that affects the practice of certain state-licensed professionals, including veterinarians. By that logic, there is not much room (if any) left for municipal legislation on any topics that affect state-licensed professionals in some degree. Amici will therefore demonstrate that such an interpretation is antithetical to the result intended by the Legislature when it enacted section 460.

Amici will also demonstrate the error of carelessly fusing two unrelated statutes together, which is a fundamental assumption of the CVMA’s argument, and which the Superior Court appears to have accepted.² Indeed, through this conflation of two statutes that are directed

¹ For example, Judge Nix’s statement in *Lock v. Falkenstine* that “Society could not long tolerate a system of laws which might drag to the criminal bar every lady who might impale a butterfly, or every man who might drown a litter of kittens” would likely not be well received today. (*Lock v. Falkenstine* (Okla. Crim. App. 1963) 380 P.2d 278, 283.)

² The Superior Court’s opinion provides little insight into its reasoning, but it appears to have adopted the arguments set forth by the CVMA on

[Footnote continued on next page]

to entirely different purposes and groups of people, the CVMA has dramatically and improperly enlarged the scope of section 460 far beyond the limited reach intended by the Legislature.

Moreover, amici will illustrate why preemption by the VMPA is not properly at issue. Because the VMPA occupies the field of licensing veterinarians, and the challenged ordinance regulates the non-therapeutic declawing of animals, the State and local laws are not in direct conflict. Thus, under California's well-settled law of preemption, the Court need not—and should not—choose between one and the other.

III. RESPONDENT CVMA WILL NOT BE PREJUDICED BY ALLOWING AMICI TO FILE A BRIEF

In response to the Request for Extension of Time to File an Amicus Brief filed by the Humane Society of the United States (“HSUS”), the CVMA filed an Opposition, in which it argued that HSUS's Request should be denied because: (1) the time for filing had already elapsed, and (2) it would be prejudiced by HSUS's filing.

The CVMA's argument regarding the deadline for filing is based on a fundamental misread of the applicable Rules. To support its argument, the CVMA cites only to CRC 8.200(c)(1). (*See* Opposition at 1.) First, the applicable rule is actually CRC 13—Rule 8.200 does not become effective until January 1, 2007. (*See* <http://www.courtinfo.ca.gov/jc/documents/reports/063006Item5.pdf> [last visited December 26, 2006].) Rule 8.200,

[Footnote continued from previous page]

summary judgment. (*See* AA 741-42.) Given the paucity of analysis, amici believe that their analysis on issues that have not yet been briefed by the parties, such as the impropriety of importing section 4826(d) of the VPMA into unrelated section 460, will provide a unique perspective.

however, is unchanged from Rule 13, and the cited provision with the 14-day deadline *applies only to amicus curiae briefs filed by the Attorney General's Office.* (See CRC 13(c)(6) [“The Attorney General may file an amicus curiae brief without the presiding justice’s permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last respondent’s brief is filed, and must provide the information required by (2) and comply with (4). Any party may serve and file an answer within 14 days after the brief is filed.”].)³

In fact, Rule 13 (and the version that becomes effective on January 1, 2007, Rule 8.200) does not contain a filing deadline for an amicus curiae brief. (See CRC 13.) The CVMA’s assertion that an amicus must demonstrate “specific and compelling reasons for the delay” is thus misplaced because there is no delay to explain. Moreover, the cited language is inapplicable because it comes from the Rule for filing amicus briefs in the Supreme Court, not the Court of Appeal. (See Rule 29.1(f)(2) and new rule 8.520(f)(2) [effective January 1, 2007].) Accordingly, amici’s brief is timely offered for filing.

Finally, CVMA’s argument that it will be prejudiced by such a filing is inapplicable here. Specifically, unlike the HSUS application, amici are filing their brief with their application, in accordance with Rule 13(c)(3). As of the time this document was prepared for filing, oral argument has not yet been set, and amici are not requesting a delay of the oral argument

³ Moreover, the CVMA’s citation to CRC 8200(c)(1) to support its 14-day deadline “rule” is misplaced, as subsection (c)(1) does not mention a 14-day deadline. The deadline actually arises in subsection (c)(6).

schedule. Thus, accepting the brief of amici will not delay the ultimate disposition of this matter.

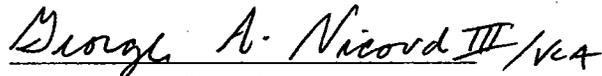
IV. CONCLUSION

Accordingly, amici respectfully request that this Court grant their application for leave to file the attached amici curiae brief in support of appellant, and that the amici have the opportunity to participate in this important appeal.

Dated: December 27, 2006

Respectfully submitted,

By: GIBSON, DUNN & CRUTCHER LLP



George A. Nicoud III

Sarah E. Piepmeier

Attorneys for Amici Curiae

ANIMAL LEGAL DEFENSE FUND,
THE ASSOCIATION OF VETERINARIANS
FOR ANIMAL RIGHTS, AND
THE PAW PROJECT

PROOF OF SERVICE

I, Laurie Walters, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 S. Grand, Los Angeles, CA 90071, in said County and State. On the date indicated below I served the within:

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ON BEHALF OF THE ANIMAL LEGAL DEFENSE FUND, ASSOCIATION OF VETERINARIANS FOR ANIMAL RIGHTS, AND THE PAW PROJECT IN SUPPORT OF APPELLANT AND [PROPOSED] ORDER

by placing a true copy thereof in an envelope addressed to each of the persons named below at the addresses shown:

Daniel Lawrence Baxter
Wilke Fleury Hoffelt Gould & Birney, LLP
400 Capitol Mall
22nd Floor
Sacramento, CA 95814
Phone: (916) 441-2430
Fax: (916) 442-6664
Email: dbaxter@wilkefleury.com
*Attorneys for Plaintiff/Respondent:
California Veterinary Medical Assoc.*

Michael Jenkins
Jenkins & Hogan, LLP
1230 Rosecrans Avenue
Suite 110
Manhattan Beach, CA 90266
Phone: (310) 643-8448
Fax: (310) 643-8441
Email: Mjenkins@localgovlaw.com
*Attorneys for Defendants/Appellants,
City of West Hollywood*

Orly Degani
Sedgwick, Detert, Moran & Arnold, LLP
801 S. Figueroa Street
18th Floor
Los Angeles, CA 90017-5556
Phone: (213) 426.6900
Fax: (213) 426.6921
Email: orly.degani@sdma.com
*Attorneys for Defendant/Appellant,
City of West Hollywood*

Hon. James A. Bascue
Superior Court of California
LA Superior Court, West District
Santa Monica Courthouse
1725 Main Street
Santa Monica, California 90401
Trial Judge

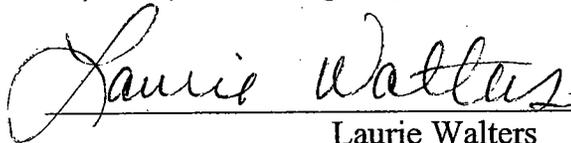
And by placing 4 true copies thereof in an envelope addressed to the person named below at the addresses shown:

**Frederick K. Ohlrich
Clerk of the Court
California Supreme Court
350 McAlister Street
Sacramento, CA 94102-4797**



BY OVERNIGHT DELIVERY: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with Gibson, Dunn & Crutcher's practice in its above-described San Francisco office for the collection and processing of correspondence for distributing by Federal Express, UPS, and/or U.S. Postal Service Overnight Mail; pursuant to that practice, envelopes placed for collection at designated locations during designated hours are deposited at the respective office that same day in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on December 27, 2006, at Los Angeles, California.



Laurie Walters