Tuesday, September 22, 2009

Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol
Sacramento, CA 95814

Veto request on AB 243

Dear Governor Schwarzenegger;

PetPAC representing over 65,000 pet owners and dog and cat clubs is opposed to Assembly Bill 243, Nava, as amended. While the provisions of AB 243 as introduced seemed appropriate, the latest amendments over step the boundaries of a fair and just law. As amended, AB 243 could have far reaching detrimental consequences to pet owners.

AB243 CONTAINS UNTENABLE PROVISIONS
REGARDING FORFEITURE EVEN IF ACQUITTED
In general, forfeiture is considered quasi-criminal, and if such proceeding subjects a defendant to the loss of liberty, then counsel should be appointed. Of course in this case, the proponents have decided that even if a jury has acquitted a defendant, then the defendant can still be deprived of his/her animal or animals by yet another hearing. In fact the defendant must DEMAND such a hearing in order to obtain consideration for the animal(s) release, but no time frame nor procedure is set forth. Proponents do not state HOW owner-defendant is notified of how/when this demand must be made.

In that required hearing, which is not outlined and does not contain provisions for adequate notice or hearing, proponents claim that the defendant might regain custody of the animal(s), but only upon showing of all of the following: proof of ownership, proof that all charges for cost of seizure/care have been paid, proof that the animals are physically fit/that owner has demonstrated to the seizing agency or the court, that the owner can/will provide necessary care and lastly, proof that the defendant can and will provide necessary care.

Apparently if the owner does not demand this hearing, then the owner will not obtain custody of his/her animals, even if he/she was acquitted by a jury. Furthermore, if owner does not "prove" that the elements specified are met to the proponent's satisfaction [since no standards are specified as to proof], then it is possible that such proof cannot be provided regardless, because no standards are used within which to determine the outcome. This element is overly vague and the owner would not know what is expected in terms of proof; additionally, the defendant should NOT have to DEMAND a hearing to prove his/her worthiness if acquitted or otherwise exonerated.

II AB243 LACKS SUFFICIENT STANDARDS TO BE USED IN ORDER TO
OBTAIN FORFEITURE OF OWNER'S PROPERTY

This means that if the seizing agency has not properly taken care of an animal, it might not be physically fit, and thus, defendant does not get the animal back? What types of "proof" under what "standards" of care will be used? Is defendant subjected to the whims of the proponents idea of "good", "not good" or insufficient? Should the subjective beliefs of the seizing agency be the standards that are used? How will defendant be able to "prove" such elements if we don't know what standards will be used to judge him/her?

The hearing in question is presumably before a judge according to the proponents, but here are no provisions for when or how this will be done, and upon what type or length of notice, and whether or not witnesses can testify, and to what burden of proof shall the defendant be held to–presumption, preponderance, reasonable doubt? A defendant having previously satisfied a lien may still be subject to this questionable procedure that has no standards. This process, which is highly questionable, but which proponents have devised both prior to owner's trial, during the pendency of the case, and even AFTER acquittal on the case, and even where owner is NOT charged, or even arrested–but just has had a search warrant obtained. This appears to be a seriously dubious proposition in total. We are talking about forfeiture without due process, and that is before, during, and even after the case is dismissed. We are also looking at the same element even if owner is not arrested, or not even charged.

III AB243 ALLOWS FORFEITURE PRIOR TO OWNER'S POSSIBLE CONVICTION
AND CIRCUMVENTS PROCEDURAL DUE PROCESS

Section (k)(1) that proponents have devised is quite problematic. Even if defendant has satisfied the lien for cost/care, the proponents claim that BEFORE the defendant completes his criminal case, the seizing agency or district attorney "may" file a petition requesting that the court order immediate forfeiture of the animal(s) BEFORE a criminal charge is finalized. Proponents say, that if the moving party can establish "probable cause" to believe that the owner (even if acquitted) would not provide necessary care OR that owner could not "legally" be permitted to keep any of the animals, THEN the court SHALL order IMMEDIATE FORFEITURE OF THE ANIMAL(S) to the moving party.

This amounts to the people or seizing agency obtaining forfeiture without the owner having a hearing with procedural due process since proponents say they need only show probable cause, but it does not say owner is entitled to defend the charge, but must instead give up the property. If that is the case, why would owner need to try his/her case at all? Why couldn't the proponents just take the owner's animals because they have devised a method to do so despite the court, despite the case, and apparently, despite legal proceedings overall? Although it is difficult to foresee what circumstances would give rise to such a situation, we might presume that a stolen animal, or perhaps some type of "illegal" animal might fit the bill.

For example, an exotic animal that was not allowed in the jurisdiction unless a permit was obtained, or if the owner-defendant was in jail on another charge where he/she could not care for an animal? In any event, it may be hard to determine when owner gets his/her day in court, if he/she has waived time; thus, it is very unlikely that proponents would be able to establish by "probable" cause alone, how or why owner could not care for such animals.

In any event, such circumstances should not allow immediate forfeiture of the animals in question when the owner is not afforded the requisite procedural due process. Besides being extremely questionable at best, the proponent's provisions have purposely left out the owner's notice and opportunity to be heard via the "immediate" forfeiture which the Judge "shall" order according to this proposed bill. Such a proposed law does not meet required due process.

IV AB243 APPLIES FORFEITURE TO SEARCH WARRANT SEIZURES
WHEN OWNER IS NOT ARRESTED OR CHARGED WITH A CRIME

This proposed bill would allow the seizing agency/District Attorney to NOT arrest the owner, and NOT charge the owner with a crime, BUT would allow seizure and forfeiture of animals even where owner-defendant is not charged with a crime.

The purpose of this change to the law apparently rests on the proponent's desire to obtain forfeiture/seizure of animals where citizens are not charged with a crime, thereby giving proponents the ability to seize more animals only because they somehow managed to obtain a warrant to search. If a warrant did not disclose animals that were in need of immediate seizure, why would the owner need to face forfeiture? It is believed that proponents have devised these procedures simply as a method of gaining impound fees and costs as search warrants are

increasingly being used for cases involving only "barking" or "no license" or "over limit," none of which actually require either forcible entry, night time entry, or even a warrant, under most circumstances.

Again, these are all highly questionable and extremely problematic provisions which attempt to basically circumvent our legal procedures, the owner's rights, and would seemingly set up the State of California to excessive legal challenges, appeals, and further expenses involving animal control, court time, and administrative costs.

Sincerely,

Bill Hemby
Chairman

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