



MICAH Z. KELLNER  
65<sup>th</sup> Assembly District

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

COMMITTEES  
Banks  
Cities  
Consumer Affairs and Protection  
Environmental Conservation  
Steering

August 31, 2010

The Honorable Michael R. Bloomberg  
Office of the Mayor  
City Hall  
New York, NY 10007

Dr. Thomas Farley  
Commissioner  
NYC Department of Health & Mental Hygiene  
125 Worth Street  
New York, NY 10013

Dear Mayor Bloomberg and Dr. Farley:

It has come to my attention that Animal Care & Control of New York City (ACC) recently unveiled a new volunteer policy that threatens to expel volunteers for exercising their rights to free speech and to petition their government for redress of grievances. Specifically, the policy states that volunteers may not “publicly criticiz[e]” or cast the agency “in a negative light” without permission from ACC. It also prohibits them from “[p]osting [criticism] on any internet site such as Facebook, My Space, Craig’s List, etc.” It further states that “[v]olunteers are prohibited from distributing their personal information, or opinions in regards [to ACC] volunteers, staff, animals, and/or policies to the public.” Those who do “will be terminated.” This policy violates the constitutional rights of volunteers.

42 U.S.C. § 1983 states, in relevant part,

Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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It is a violation of Section 1983 for a state or municipal government to take action designed to prevent or intimidate people from exercising their First Amendment rights, or punish them for doing so, and there can be no dispute that complaining about neglectful and abusive conditions at animal shelters is a constitutionally protected right. In fact, it appears that ACC's new policy was specifically enacted in response to complaints by volunteers and others about just such conditions at ACC including, but not limited to, animals wallowing in their own waste, cats and kittens going without food and water for extended periods of time, dogs not being properly socialized, ongoing killing of healthy animals, and failure to treat medical conditions. In one case, a dog chewed off half his own tail; apparently no protective e-collar was put on the dog until several days later, by which time the tail was half-destroyed.


A rescuer or volunteer not only has the First Amendment right to speak out against abuses committed by a governmental entity, he or she also has a constitutionally protected right to demand that the government correct the wrongs that are identified. As the Supreme Court has stated, a government entity "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech."

These principles were recently applied in a legal action brought by a rescuer who was terminated for calling attention to the conditions at Los Angeles County Department of Animal Care & Control shelters and complaining about failures to properly care for animals. (Cathy Nguyen, No Kill Advocacy Center, et. al. vs. County of Los Angeles. L.A. Superior Court Case No. BS112581). Significantly, the Court found that plaintiff's suspension would no doubt discourage such a person from exercising her First Amendment rights and specifically ruled, following a line of established federal precedent, that the opportunity to serve as a volunteer is a protected government privilege. As a result, the Court required the County to restore the rescuer's access to the shelter. In the case of ACC, the agency has enacted rules specifically indicating that volunteers will be terminated for exercising those rights.

The City's attempt to maintain that ACC is an independent non-profit will not shield the City from liability if the volunteer policy is maintained. It would be difficult to argue in a court of law that ACC is anything other than an arm of the City: it was created by the Giuliani administration, has a singular mission of running animal control for the City, operates under city-owned and controlled facilities, and has a governing structure dominated by the City. While ACC was formed as a 501(c)(3) not-for-profit corporation, it operates as a *de facto* government agency; it is controlled by you as Mayor and Health Commissioner. But even in the unlikely event a court determines ACC is an independent agency, the City is still subject to liability under Section 1983. Indeed, a number of federal courts already have ruled that Section 1983 applies to a private agency performing the function of a municipal animal shelter.

Because ACC's volunteer policies are so obviously contrary to our country's fundamental principles of liberty, I request that this policy be repealed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Micah Z. Kellner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Micah Z. Kellner  
Assembly Member

cc:

Michael A. Cordozo, Esq., New York City Corporation Counsel

John C. Liu, New York City Comptroller

Julie Bank, Executive Director, Animal Care & Control of New York City