CARL D. LIGGIO
ATTORNEY AT LAW
E-MAIL: CARL.SR@CARLLIGGIO.COM
OFFICE SUITE 9A
27 W. 96TH STREET
NEW YORK, NY 10025
CELL: 312-953-4887

ADM: DC, IL, NY

September 23, 2020

Via NYSCEF and glebovit@nycourts.gov

Hon. Gerald Lebovits
Supreme Court, Civil Branch, New York County
60 Centre Street
New York, NY 10007

Re: Commercial Division Assignment of *People of the State of New York v. The National Rifle Association, et al.*, Index No. 451625/2020

Dear Judge Lebovits:

We represent John Frazer in the above referenced action. We have reviewed the NRA's letter of today's date to you concerning your possible recusal in this action.

We respectfully offer some further considerations for you in connection with your decision. By no means are we suggesting that if you decide to continue in this action (notwithstanding the information set out in the NRA's letter) that such continuance is a violation of the ethics rules. Rather we wish to emphasize certain related issues that we urge you to consider in making your decision.

As the NRA letter notes, and as we are sure you are aware particularly in light of the Attorney General's campaign promises, this case will receive considerable public attention. We should fully expect that supporters of both sides of the issue will digest and promote every single facet of the case in the press to advance their respective narratives. Given the high profile that this case is likely to engender, we believe that any issue whose "appearance" touches upon the integrity of the proceedings will be focused upon as well also the merits of the underlying proceedings and thus take on added commentary that will detract from the merits of the respective positions that each party will advance.

In this connection, we offer a historical analog for your consideration. Publius Clodius Pulcher, who had sneaked into a party at which Caesar's wife was in attendance, was tried for trying to seduce Caesar's wife, Pompeia. Following Pulcher's acquittal, Caesar divorced Pompeia. When asked whether that divorce was related to Pulcher's trial, Caesar reportedly responded "My wife ought not even to be under suspicion."

This has been translated over the years into the axiom that one in high places should always be above reproach.

My own experience with this concept is rooted in my 57 years in the law of which almost 50 years have involved representing the accounting profession including 22 years as General Counsel of Ernst & Young and its predecessor, Arthur Young, having lectured on legal ethics, and having served for 6 years on the First Department's Disciplinary Committee.

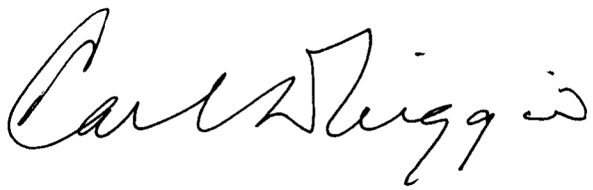
In 1959, Tommy Higgins, then head of Arthur Young and Chairman of the AICPA committee on ethics, caused it to amend its independence rules to require that a firm doing an audit of its clients avoid any "appearance" of the lack of independence. Although many thought the rule was exceedingly harsh (for example, when I served as General Counsel, I could not own even one share of any of our clients, including our largest client, Mobil, even though I had nothing to do with the audits) that rule was adopted by the AICPA and became part of the SEC independence rules in Regulation S–X for all entities subject to its regulation.

As you are well aware, the Bar's conflict of interest rules with respect to prior representation of clients impose a similar, if not identical, "appearance" standard and obligation on lawyers.

Although the concept of "appearance" can be ephemeral, it is said to be like beauty "which is in the eye of the beholder." Accordingly, the issue of "appearance" will be perceived differently by a variety of different constituencies some of whom are today attacking the judiciary for its lack of independence and impartiality.

Thus, we respectfully urge that you consider the potential "appearance" issue with respect to this extremely high-profile public litigation.

Very truly yours



COUNSEL FOR JOHN FRAZER

cc: Monica Connell
Emily Stern
Judith Young
Sarah B Rogers
William Wang
William B. Fleming