

B R E W E R

ATTORNEYS & COUNSELORS

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:

On behalf of the National Rifle Association of America (the “NRA”), and further to the NRA’s letter dated September 18, 2020 (Dkt. No.30), we write to further address the disclosure made Friday by the New York State Office of the Attorney General (the “NYAG”)¹ regarding the prior, substantial attorney-client relationship between Your Honor and Monica Connell (“Connell”), one of the lead attorneys who conducted the NYAG’s investigation of the NRA and has appeared as counsel in this matter.

At the outset, the NRA reiterates its view that this matter, like other complex dissolution proceedings involving not-for-profit corporations, belongs in the Commercial Division consistent with the Commercial Division Rules.² If the Court declines to request a transfer pursuant to 22 NYCRR 202.70(e), then the NRA respectfully suggests that in this situation, it would be the “better practice . . . for [the] [C]ourt to disqualify itself in a special effort to maintain the appearance of impartiality,”³ and requests that Your Honor recuse.

We make this request upon careful consideration, notwithstanding our significant regard for Your Honor’s professionalism, in view of the highly sensitive and politicized circumstances of this case. The mere “appearance of impropriety,”⁴ even arising from a “seemingly innocuous”

¹ See Dkt. No. 26.

² See Rogers letter to Administrative Judge Kaplan, dated September 16, 2020 (Dkt. No. 26); Fleming letter to Administrative Judge Kaplan, dated September 16, 2020 (Dkt. No. 28). The NYAG expressed the same view in its Request for Judicial Intervention filed August 6, 2020 (Dkt. No. 8).

³ See, e.g., *Indep. Party State Comm. of State of New York v. Berman*, 20 A.D.3d 423, 424 (2d Dept. 2005); see also 22 NYCRR 100.3[E][1] (“A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned[.]”).

⁴ *Doyle v. State Comm’n on Judicial Conduct*, 23 N.Y.3d 656, 660 (NY Ct. App. 2014) (upholding removal of judge who, *inter alia*, “presided over an estate matter submitted by an attorney who had represented [the judge] less than two years earlier”).

B R E W E R

Hon. Gerald Lebovits

September 23, 2020

Page 2

circumstance, may undermine the effectiveness and perceived integrity of the judicial process.⁵ Here, it is the NRA's understanding that Ms. Connell represented Your Honor in a high-profile litigation lasting seven years from commencement to settlement.⁶ The existence of a significant, multi-year attorney-client relationship between Your Honor and Plaintiff's counsel is precisely the type of situation which compels caution regarding the apparent impartiality of the Court,⁷ and must be evaluated amid a constellation of other facts addressed in recent letter submissions. In sum: this case was assigned to this Court in apparent contravention of the Commercial Division Rules; the court's attorney is a recent high-ranking employee of Plaintiff; Your Honor was represented personally by Plaintiff's counsel for many years in a significant matter; and, this dispute has already provoked major public concern regarding political bias.⁸

As the Court knows, judicial conduct canons and related recusal standards "exact more than virtuous behavior; they command impeccable appearance."⁹ To maintain the appearance of impartiality in this case, the NRA respectfully requests that the Court seek to a transfer to the Commercial Division pursuant to 22 NYCRR 202.70(e) or, in the alternative, recuse.

⁵ *Casterella v. Casterella*, 65 A.D.2d 614 (2d Dep't 1978).

⁶ See *Mitchell v. Fishbein*, Index No. 01-cv-2760-JGK-GWG (S.D.N.Y.). The federal docket reviewed by the NRA suggests that Ms. Connell actively participated as a lead advocate during, at minimum, the period from 2004 to 2008, wherein she appears as a frequent signatory to written submissions on behalf of Your Honor and other defendants. See, e.g., Dkt. Nos. 81, 90, 121, 122, 124, 125, 152, 171, 180, 186, 212, 214.

⁷ See, e.g., *Matter of Intemann*, 73 N.Y.2d 580, 582 (N.Y. Ct. App. 1989) (where judge heard matters brought by an attorney who was his close friend, business associate, and personal attorney, "[t]he nature of the relationship was such that to avoid the appearance of impropriety and the potential for a conflict of interest, petitioner should have disqualified himself from those cases.") (internal citations and quotation marks omitted).

⁸ See *Letitia James' Political Pot-Shots at the NRA*, New York Post, August 9, 2020, <https://nypost.com/2020/08/09/letitia-james-political-pot-shots-at-the-nra/>; *An Affront to Civil Society*, City Journal, August 10, 2020, <https://www.city-journal.org/letitia-james-proposal-to-dissolve-nra>; *New York's Attorney General Shouldn't Dismantle the NRA*, Bloomberg Opinion, August 6, 2020, <https://www.bloomberg.com/opinion/articles/2020-08-06/new-york-s-attorney-general-shouldn-t-dismantle-nra-in-lawsuit>; *The NRA Has a Right to Exist*, Wall Street Journal Opinion, August 26, 2020, https://www.wsj.com/articles/the-nra-has-a-right-to-exist-11598457143?reflink=share_mobilewebshare; *Guns, the NRA and the Second Amendment are Under Assault from the Left*, NBC News Opinion, August 21, 2020, <https://www.nbcnews.com/think/opinion/guns-nra-second-amendment-are-under-assault-left-ncna1237712>.

⁹ See *Hall v. Small Bus. Admin.*, 695 F.2d 175 (5th Cir. 1983). Interpreting Canon 3(C)(1) of the Federal Code of Judicial Conduct (which mirrors the requirement in 22 NYCRR 100.3[E][1] that a judge "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"), the Fifth Circuit emphasized that the this standard "focuses on what is revealed to the parties and the public, as opposed to the existence in fact of any bias or prejudice," and requires a judge to "exercise his discretion in favor of disqualification if he has any question about the propriety of his sitting in a particular case." *Id.* at 178-79. The *Hall* court held that a magistrate judge erred in failing to recuse himself where his law clerk had formerly been a member of the plaintiff class in the instant lawsuit. *Id.*

B R E W E R

Hon. Gerald Lebovits

September 23, 2020

Page 3

Sincerely,

/s/ William A. Brewer III

William A. Brewer III

wab@brewerattorneys.com

Sarah B. Rogers

sbr@brewerattorneys.com

BREWER, ATTORNEYS & COUNSELORS

750 Lexington Avenue, 14th Floor

New York, New York 10022

Telephone: (212) 489-1400

Facsimile: (212) 751-2849

COUNSEL FOR THE NATIONAL
RIFLE ASSOCIATION OF AMERICA