

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL,

Defendants.

Index No. 451625/2020

**AFFIRMATION OF EMILY
STERN IN RESPONSE TO
DEMANDS OF DEFENDANT
WAYNE LAPIERRE AND
DEFENDANT JOHN FRAZER
UNDER CPLR RULE 511(b) FOR
CHANGE OF PLACE OF TRIAL**

EMILY STERN, an attorney duly admitted to practice before the Courts of this State,
hereby affirms the following under the penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General and the Co-Chief of the Enforcement Section
of the Charities Bureau of the Office of the New York State Attorney General (“OAG” or
“Attorney General”).

2. I submit this affirmation pursuant to CPLR Rule 511(b) in response to Defendant
Wayne LaPierre’s and Defendant John Frazer’s (“Individual Defendants”) respective Demands
Under CPLR Rule 511(b) For Change Of Place Of Trial On The Ground That The County
Designated For That Purpose Is Not A Proper County (the “Demands”), each filed on October
30, 2020. NYSECF Dkt. Nos. 128 and 131. The Demands are identical to a demand previously
made by Defendant, The National Rifle Association of America, Inc. (“NRA”) and seek to move
this action to Albany County, purportedly on the grounds set forth in CPLR §§ 510(1) and
510(3), which state, respectively, that the Court may change venue where “the county designated

for that purpose is not a proper county” (§ 510(1)), or where “the convenience of material witnesses and the ends of justice will be promoted by the change” (§ 510(3)). *See* NYSECF Dkt. No. 39 (NRA Demand For Change of Place of Trial). For the reasons set forth below, venue is proper in New York County, the forum designated by the Attorney General.¹

3. Pursuant to the Civil Practice Law and Rules in New York, the plaintiff has the right to designate venue at the outset of a case. CPLR § 509. It is well-established that “the plaintiff’s choice of forum should rarely be disturbed,” except where the balance “is strongly in favor of the defendant.” *Weingarten v. Bd. Of Educ. Of City Sch. Dist. Of City of New York*, 776 N.Y.S.2d 701, 704 (Sup. Ct. Bronx Cnty. 2004). The OAG’s Summons and Complaint, dated August 6, 2020, designate venue in New York County pursuant to (a) CPLR § 503 because the Attorney General has an office in the county; and (b) N-PCL §§ 1110 and 102(a)(11), because the location of the office of the NRA is in New York County. *See* NYSECF Dkt. No. 1.

4. CPLR § 503(a) provides: “the place of trial shall be in the county in which one of the parties resided when it was commenced A party resident in more than one county shall be deemed a resident of each such county.” The Attorney General is a government entity, which has a place of residence in each of the counties in New York where the OAG maintains an office. One of the OAG offices is at 28 Liberty Street, New York, NY, which is in the County of New York.

¹ This affirmation is materially consistent with the affirmation of Emily Stern, dated October 26, 2020, which the Attorney General submitted in response to the NRA’s identical demand to change the place of trial. *See* NYSECF Dkt. No. 108 (Affirmation of Emily Stern in Response to Demand Under CPLR 511(b)). The Attorney General acknowledges that Part 3, Practices and Procedures, governing motions provides, at Section V(c), that affidavits and affirmations should not contain legal argument. However, the procedure for responding to a demand for a change of the place of trial pursuant to CPLR Rule 511(b) requires the submission of only an affidavit. For that reason, the affirmations the Attorney General has submitted in response to the Individual Defendants’ Demands address both the factual and legal bases for venue in New York County.

5. The Individual Defendants' Demands seek to change the place of trial based on the contention that Albany County is the proper venue pursuant to N-PCL § 1110 for the Attorney General's dissolution claims that lie solely against the NRA, not the Individual Defendants. The Individual Defendants assert no basis to challenge venue on those grounds, nor do they challenge the propriety of venue in New York County for the numerous claims asserted against them in the Complaint. Even assuming the Individual Defendants have the requisite standing, their demand to change the venue to adjudicate the dissolution claims fails.

6. N-PCL § 1110 provides: "An action or special proceeding under this article shall be brought in the supreme court in the judicial district in which *the office of the corporation* is located at the time of the service on the corporation of a summons in such action or of the presentation to the court of the petition in such special proceeding." (Emphasis added.) N-PCL § 102(a)(11) defines the "Office of a corporation" as "the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where activities are conducted by such corporation."

7. The NRA was formed pursuant to an 1865 special act of the State of New York Legislature, on November 17, 1871, and incorporated on November 20, 1871. *See* Exhibit 1 hereto, annexing the Affirmation of Hanna Rubin ("Rubin Aff."), at Rubin Aff. Exhibit A, pp.

49-56²; Exhibit 2 hereto, annexing Chapter 368 of the Laws of 1865 (“1865 Act”).³ The 1865 Act required the NRA to file a written certificate of incorporation “in the office of the clerk of the county in which the office of [the corporation] shall be situated.” Ex. 2, p. 1. The Act further required that such certificate be approved by “one of the justices of the supreme court of the district in which the principal office of such company or association shall be located.” *Id.*

8. The NRA established that the location of its office at the time of its formation was in New York County by filing its original certificate of incorporation with the clerk of New York City and New York County. Rubin Aff., Ex. A at p. 55.

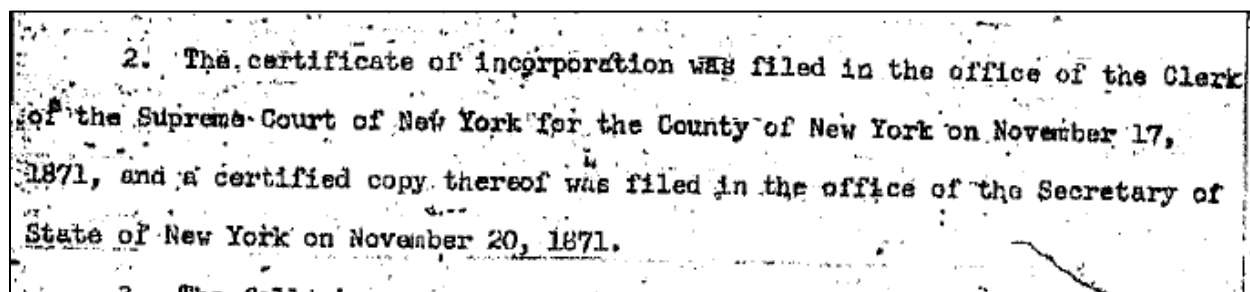
9. Over the course of the NRA’s nearly 150-year history, the NRA amended its certificate of incorporation on various occasions. Filings the NRA made in connection with such amendments confirm that the organization has continued to maintain New York County as the location of the organization’s office for the purpose of its corporate status. Amendments to the NRA’s certificate of incorporation restate that the original certificate of incorporation was filed in New York County. The NRA also continuously sought required approvals of amendments by Justices of the First Judicial District in New York County. *See e.g.*, N-PCL § 804(a)(iii) (“Every certificate of amendment of a charitable corporation which seeks to change or eliminate a purpose or power enumerated in the corporation’s certificate of incorporation, or to add a power or purpose not enumerated therein, shall have endorsed thereon or annexed thereto the approval

² Attached hereto as Exhibit 1 is a true and correct copy of the Affirmation of Hanna Rubin, the Director of the Registration Unit of the OAG Charities Bureau, dated November 4, 2020. Ms. Rubin’s affirmation annexes (at Exhibit A) true and correct copies of a Registration Statement for Charitable Organizations, Form CHAR410 (Amendment), submitted by the NRA to OAG on October 22, 2019, which contains copies of the NRA’s historical incorporation documents and the amendments (the “NRA 410 Amendment Filing”). The NRA certified to the OAG that the corporate documents proffered in support of the NRA 410 Amendment filing were true, correct and complete. References to page cites are to the PDF of Exhibit 1.

³ Attached hereto as Exhibit 2 is a true and correct copy of Chapter 368 of the Law of 1865 (“An Act for the incorporation of societies or clubs for certain social and recreative purposes.”)

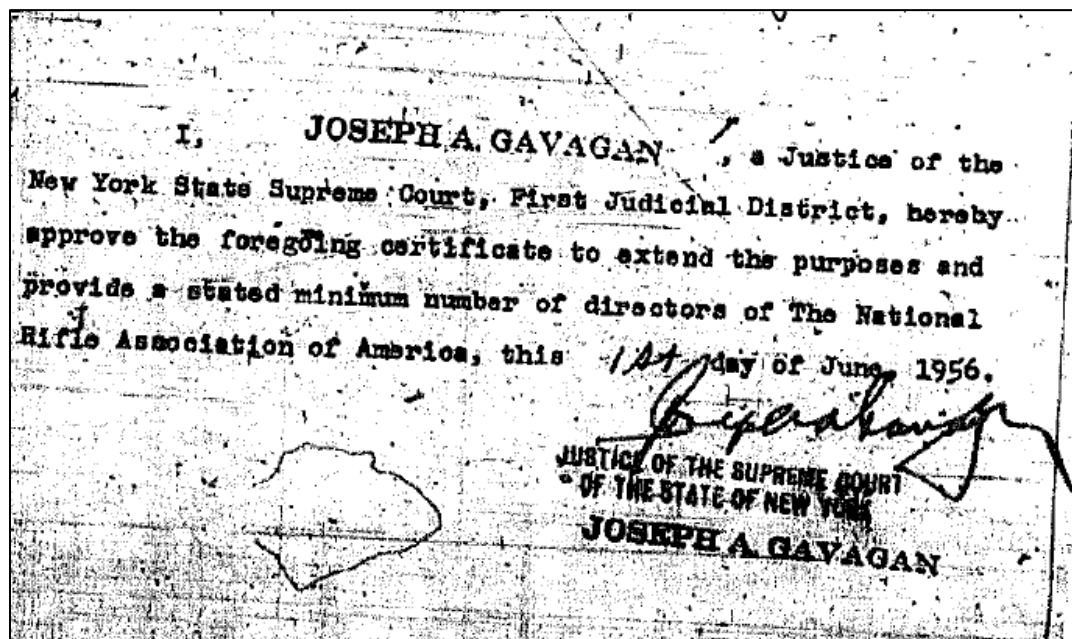
of either (A) the attorney general, or (B) *a justice of the supreme court of the judicial district in which the office of the corporation is located* (emphasis added); Membership Corp. Law § 30 (predecessor to N-PCL § 804).

10. By way of example, on page 34 of the Rubin Aff., Ex. A, a March 1956 “Certificate of Extension of Purposes and to Provide a Stated Minimum Number of Directors of the National Rifle Association of America Pursuant to Section 30 of the Membership Corporations Law”, states at paragraph 2:



2. The certificate of incorporation was filed in the office of the Clerk of the Supreme Court of New York for the County of New York on November 17, 1871, and a certified copy thereof was filed in the office of the Secretary of State of New York on November 20, 1871.

11. The same 1956 “Certificate of Extension of Purposes” reflects approval by one of the Justices of the Supreme Court, First Judicial District, in New York County (Rubin Aff. Ex. A, p. 35):



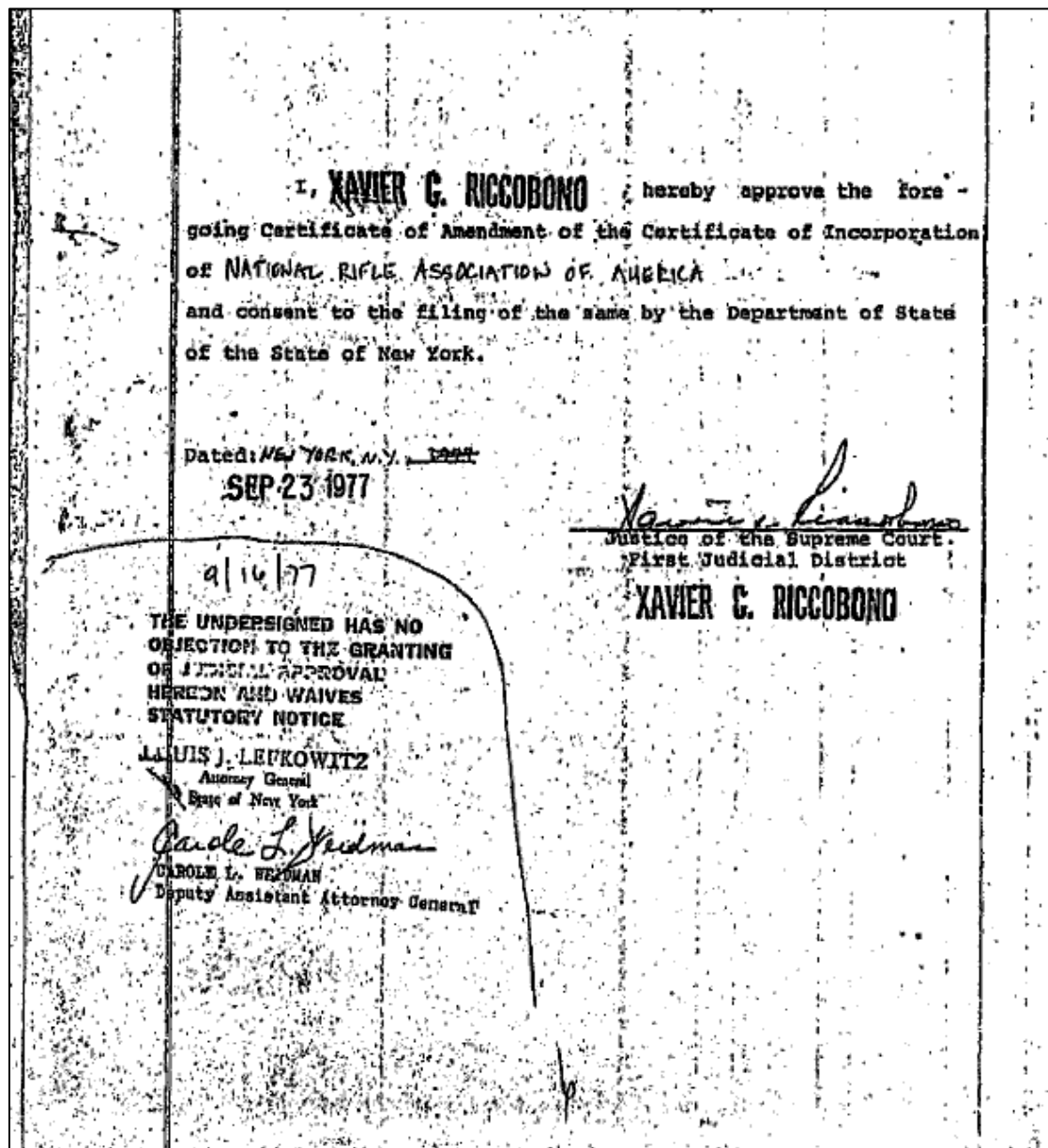
I, JOSEPH A. GAVAGAN, a Justice of the New York State Supreme Court, First Judicial District, hereby approve the foregoing certificate to extend the purposes and provide a stated minimum number of directors of The National Rifle Association of America, this 1st day of June, 1956.

JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK
JOSEPH A. GAVAGAN

12. Similarly, on page 20 of the Rubin Aff., Ex. A, a July 1977 “Certificate of Amendment of the Certificate of Incorporation of the National Rifle Association of America Under Section 803 of the Not-for-Profit Corporation Law” at paragraph 5(b), provides:

(b) The following purposes are to be added to those stated in the certificate of incorporation originally filed in the office of the Clerk of the County of New York on November 17, 1871 and a copy filed in the office of the Secretary of State of New York on November 20, 1871:

13. The 1977 Certificate of Amendment also includes approval by a Justice of the Supreme Court, First Judicial District, in New York County (Rubin Aff., Ex. A, p. 24):



14. There is no evidence that the NRA has effectuated a change to the county location in which the office of the corporation was located. To the extent the NRA or the Individual Defendants attempts to rely on a Certificate of Change filed with the Department of State in 2002 as evidence of such a change, that reliance would be misplaced. *See* NYSECF Dkt. No. 99 at pp. 17-18, NRA Memorandum of Law in Support of Motion to Dismiss; Dkt No. 132 at pp. 8-9; 13-14, Amended Memorandum of Law in Support of Defendant Wayne LaPierre's Motion to

Dismiss or Stay. On its face, the NRA's certificate only elected to change the address to which the Secretary of State shall forward copies of process accepted on behalf of the NRA and to designate an agent for service of process. The certificate provides a clear option for changing the county in which the office of the corporation is located, which the NRA did not modify.

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231

F 021203000784

CSC 45

CERTIFICATE OF CHANGE OF

NATIONAL RIFLE ASSOCIATION OF AMERICA
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: NATIONAL RIFLE ASSOCIATION OF AMERICA

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The certificate of incorporation was filed by the Department of State on: 11/20/1971

THIRD: The change(s) effected hereby are: *(Check appropriate box(es))*

☐ The county location, within this state, in which the office of the corporation is located, is changed to: _____

☒ The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: Corporation Service Company
80 State Street, Albany, NY 12207-2543

☒ The corporation hereby: *(Check one)*

☐ Designates _____
as its registered agent upon whom process against the corporation may be served.

☒ Changes the designation of its registered agent to: _____
Corporation Service Company 80 State Street, Albany, NY 12207-2543

☐ Changes the address of its registered agent to: _____

☐ Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

Laura R. Dunlap Laura R. Dunlap, Attorney in Fact
(Signature) *(Name and Capacity of Signer)*

008-1662 (801)

15. Further, a change to the location of the office of the NRA for these purposes requires authorization by the NRA board. *See* N-PCL § 802(c). There is no corporate resolution or other equivalent documentation of such approval among the historical corporate formation documents in the NRA's 410 Amendment Filing. The NRA certified that the 410 Amendment Filing, including all attachments, were true, correct and complete. *See* Rubin Aff., Ex. A at p. 10.

16. Presently, the New York State Department of State, Division of Corporations publicly displays the NRA's county as New York. *See* Exhibit 3, annexing the publicly available Entity Information from the Department of State.⁴

17. Finally, even if there was a legitimate question as to whether New York County was an appropriate venue under N-PCL § 1110, this Court should nevertheless decline to transfer venue of this action to Albany County since the remedies sought in the present action are not confined to dissolution. Where, as here, "various other types of relief" are being sought, the Court, in its discretion, may properly maintain venue in the county where the plaintiff resides. *Tashenberg v. Breslin*, 453 N.Y.S.2d 538, 539 (4th Dep't 1982).


CONCLUSION

For the reasons set forth herein, in the accompanying affirmation of Ms. Rubin and all supporting exhibits, the Attorney General respectfully requests that the Court: (a) deny each of the Demands to change the place of the trial of this action to Albany County made by the Individual Defendants; (b) to the extent that either of the Individual Defendants subsequently moves to transfer venue of this action, require that the motion be heard in New York County in

⁴ Attached hereto as Exhibit 3 is a true and correct copy of the publicly available Entity Information from the Department of State, found at https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry (last accessed on November 4, 2020).

accordance with CPLR Rule 511(b); and (c) order such other and further relief as the Court
deems just and proper.

Dated: New York, New York
November 4, 2020



EMILY STERN