

Motion Sequence 006**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X		
PEOPLE OF THE STATE OF NEW YORK,	:	
BY LETITIA JAMES, ATTORNEY GENERAL	:	
OF THE STATE OF NEW YORK,	:	Index No. 451625/2020
	:	
Plaintiff,	:	IAS Part 3
	:	
v.	:	Hon. Joel M. Cohen
	:	
THE NATIONAL RIFLE ASSOCIATION	:	
OF AMERICA, INC., WAYNE LAPIERRE,	:	
WILSON PHILLIPS, JOHN FRAZER, and	:	
JOSHUA POWELL,	:	
	:	
Defendants.	:	
-----X		

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
WAYNE LAPIERRE'S MOTION FOR CHANGE OF PLACE OF TRIAL AND
STAY OF PROCEEDINGS PURSUANT TO CPLR 510(1) AND 511(C)**

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I.

PRELIMINARY STATEMENT

As The National Rifle Association of America (“NRA”)¹ already established in its Motion to Transfer Venue (Motion Sequence No. 5), the Attorney General’s improper, politicized demand to dissolve the NRA—which is set forth in the first and second causes of action of the complaint, and constitutes the core of this lawsuit—cannot be entertained by this Court.² Instead, Section 1110 of the New York Not-for-Profit Corporation Law (the “N-PCL”) requires that any dissolution case be brought in Albany County, the location of the NRA’s designated registered agent stated in the NRA’s certificate of incorporation. Defendant Wayne LaPierre (“LaPierre”) concurs with the NRA, adopts the arguments in Motion Sequence No. 5, and likewise moves to transfer venue to Albany County for the reasons set forth below. LaPierre additionally moves to stay these proceedings pursuant to CPLR 511(c) for the purpose of changing the place of trial. Simply put, the commencement of this case in this county was a clear circumvention of a mandatory statutory venue provision, and constitutes a defect in this Court’s jurisdiction.³ Accordingly, the case must be transferred to Albany County before any further proceedings occur.

¹ In the caption of the complaint in this action, the Attorney General identifies the lead defendant as “The National Rifle Association of America, Inc.”. There is no entity named “The National Rifle Association of America, Inc.”. Apparently, the Attorney General is referring to The National Rifle Association of America. Thus, it appears that the Attorney General has sued the wrong entity. Nevertheless, for the sake of simplicity and clarity, and to avoid confusion, for purposes of this motion, Defendant Wayne LaPierre will refer to both “The National Rifle Association of America, Inc.” and “The National Rifle Association of America” as the “NRA”.

² See NYSCEF Doc. No. 133 (Notice of Motion dated November 3, 2020); Doc. No. 134 (Affirmation of Sarah B. Rogers in Support of The National Rifle Association’s Motion to Transfer Venue dated November 3, 2020); Doc. Nos. 135-140 (Exhibits); Doc. No. 141 (Memorandum of Law in Support of The National Rifle Association’s Motion to Transfer Venue dated November 3, 2020).

³ See discussion *infra*, in Section IV(B).

II.

STATEMENT OF FACTS

As set forth in Motion Sequence No. 5, the NRA has not maintained any brick-and-mortar facilities in New York since the early twentieth century, and has never filed a single document with the Secretary of State designating an office location in New York County.⁴ Nonetheless, on August 6, 2020, the Attorney General filed a summons and verified complaint in this Court in an attempt to commence an action under Article 11 of the N-PCL, various other statutes, and common law, asserting claims against “The National Rifle Association of America, Inc.” (which she alleges to be a New York not-for-profit corporation), as well as LaPierre and others, seeking, among other things, judicial dissolution of that entity.⁵ A few minutes later, the NRA filed an action, in Albany, New York, in the United States District Court for the Northern District of New York, against Letitia James, individually and in her official capacity as Attorney General of the State of New York, alleging that she was engaged in a corrupt scheme to “take down the NRA”. In its complaint, the NRA challenges the constitutionality of her actions, and seeks a judicial declaration that “the NRA operates in substantial compliance with New York not-for-profit law”.⁶ The current, operative pleading in the federal lawsuit also asserts claims for selective enforcement of the not-for-profit law and infringement of associational rights.⁷

On August 10, 2020, the Attorney General filed a second summons and a second verified

⁴ See NYSCEF Doc. No. 134 and Doc. No. 141 Section II (A) – (C).

⁵ See NYSCEF Doc. No. 1 (summons and complaint dated August 6, 2020); complaint ¶¶ 12, ¶¶ 560-574 (“**FIRST CAUSE OF ACTION [-] Dissolution of the NRA – N-PCL §§ 112(a)(1), 112(a)(5), 1101(a)(2)**”) and ¶¶ 576-579 (“**SECOND CAUSE OF ACTION [-] Dissolution of the NRA – N-PCL §§ 112(a)(7), 1102(a)(2)(D)**”) (bolding in original); and Prayer for Relief ¶¶ A, B and C. (Boldface appears in original.)

⁶ See Affirmation of P. Kent Correll, Esq. dated November 12, 2020 (hereinafter cited as “Correll Affirm.”), ¶ 3, Ex. 1 (Complaint dated August 6, 2020, filed by the NRA against Letitia James, both individually and in her official capacity, Civ. No. 1:20-cv-00889-MAD-TWD (N.D.N.Y.)).

⁷ See *id.*, ECF No. 13.

complaint with a corrected verification.⁸ In the new verified complaint (“Complaint”), the Attorney General alleged: “Venue is properly set 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 office of the NRA is in New York County as set forth in the NRA’s certificate of incorporation.”⁹

Contrary to the Attorney General’s assertion, the NRA’s certificate of incorporation does not “set forth” that “the office of the NRA is in New York County.”¹⁰ The original certificate of incorporation, issued in 1871, does not “set forth” the location of an office at all,¹¹ nor was the NRA required to state the location of an office under then-governing law.¹² In 1877, an order was issued authorizing the NRA to change its name from “The National Rifle Association” to “The National Rifle Association of America”; neither this order nor any documentation filed in response thereto states the location of an office, either.¹³ In 1895, New York amended its laws for the first time to require that a newly-formed nonprofit designate and maintain a principal office within the State, but did not adopt any provision requiring previously-existing nonprofits

⁸ See NYSCEF Doc. No. 11 (Summons dated August 10, 2020 and Complaint dated August 10, 2020).

⁹ See NYSCEF Doc. No. 11 (Complaint), ¶ 26 and (Summons) (“The basis of venue pursuant to CPLR § 503(a) is that Plaintiff is located in New York County, with its address at 28 Liberty Street, New York, New York 10005, and because the office of defendant [NRA] is in New York County as set forth in its certificate of incorporation, pursuant to N-PCL §§ 1110 and 102(a)(11).”).

¹⁰ See Correll Affirm. ¶¶ 4 to 11 and Exs. 2 - 9 (NRA original certificate of incorporation, amendments and other certificates or instruments contained in the file maintained at the NYS Department of State, Division of Corporations). As shown below, these certificates and other instruments constitute the “certificate of incorporation” of the NRA for purposes of the New York Not-for-Profit Corporation Law and the mandatory statutory venue requirement of N-PCL § 1110. See N-PCL 102(a)(3).

¹¹ See Correll Affirm. ¶ 4, Ex. 2 (1871 NRA Certificate of Incorporation, which states that it was filed on November 20, 1871 with the Department of the Secretary of State.) Albany became the capital of New York in 1797, therefore, the Secretary of State would have been located in Albany County in 1871.

¹² See 1865 N.Y. Sess. Laws 692-695 (McKinney) (the “1865 Act”). The 1865 Act provides, in relevant part, that a nonprofit association “may” file a certificate of incorporation in the location where it intends to maintain an office (and must obtain the approval of a local judge if so), but does not require that an office address be designated for service of process or any other reason. Irrespective of where the association actually operates or sites its offices in subsequent years, the 1865 Act provides that annual asset inventories continue to be filed in the same district as the original certificate of incorporation. *Id.*

¹³ See Correll Affirm. ¶ 5, Ex. 3 (1877 court order authorizing NRA name change).

to update their filings to specify an office location.¹⁴ In 1973, a certificate was issued by the Department of State of the State of New York, which states: “The post office address to which the Secretary of State shall mail a copy of any notice required by law is 1600 Rhode Island Avenue, N.W., Washington, D.C. 20036”.¹⁵ In 1977, a certificate of amendment of the certificate of incorporation was issued, which states (again): “The post office address to which the Secretary of State shall mail a copy of any notice required by law is 1600 Rhode Island Avenue, N.W., Washington, D.C. 20036”.¹⁶ In 1985, another certificate of amendment of the certificate of incorporation was issued, which states: “The Secretary of State of New York is the designated agent for service of process on the corporation. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 1600 Rhode Island Avenue, N.W., Washington, D.C. 20036.”¹⁷ Finally, in 2002, a certificate of change was issued by the New York State Department of State, which states the NRA’s out-of-state address as: “11250 Waples Mill Road, Fairfax, VA 22030,”¹⁸ and further states: (1) “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;” and (2) “The corporation hereby: ... Changes the designation of its registered agent to: Corporation Service Company 80 State Street, Albany, NY 12207-2543”.¹⁹ Hence, in over 149 years, the NRA’s certificate of incorporation has never “set forth” that “the office of the NRA is in New

¹⁴ See N.Y. Membership Corp. L. (1895 N.Y. Laws 559) (repealed 1970).

¹⁵ See Correll Affirm. ¶ 8, Ex. 6 (1973 Certificate of Type of Not-for-Profit Corporation of the National Rifle Association of America).

¹⁶ See Correll Affirm. ¶ 9, Ex. 7 (1977 Certificate of Amendment of the Certificate of Incorporation of the National Rifle Association of America).

¹⁷ See Correll Affirm. ¶ 10, Ex. 8 (1985 Certificate of Amendment of the Certificate of Incorporation of the National Rifle Association of America).

¹⁸ See Correll Affirm. ¶ 11, Ex. 9 (2002 Certificate of Change of the National Rifle Association of America).

¹⁹ *Id.*

York County”, and, since 2002, the only office address “set forth” in the NRA’s certificate of incorporation, other than the address of the NRA’s office in Virginia, has been 80 State Street, Albany, New York.²⁰

On October 19, 2020, in the instant action, the NRA filed a demand under CPLR 511(b) for change of place of trial on the ground that the county designated for that purpose is not the proper county.²¹ That same day, the NRA moved this Court for an order: (1) pursuant to CPLR 327(a) dismissing this action on the basis of *forum non conveniens*; (2) pursuant to CPLR 3211(a)(4) dismissing or staying this action because of pending litigation between the parties; (3) pursuant to 3211(a)(1) dismissing or staying this action for improper venue; and (4) pursuant to CPLR 2201 staying this action pending the resolution of related federal cases.²² The next day, the NRA filed a motion to transfer cases for coordinated or consolidated pre-trial proceedings pursuant to 28 U.S.C. § 1407.²³ On October 26, 2020, the Attorney General filed an affirmation in response to the NRA’s CPLR 511 demand, in which she abandoned the allegation that the NRA’s certificate of incorporation “sets forth” that “the office of the NRA is in New York County.”²⁴

On October 30, 2020, in the instant action, LaPierre filed a parallel motion to dismiss or stay, adopting the NRA’s arguments, incorporating the NRA’s papers by reference, amplifying

²⁰ See Correll Affirm. Exs. 2–9. All of these documents state that they were filed with the Secretary of State in Albany County. *Id.* at ¶ 12, Ex. 10 (Screen shot of each page evidencing the filing with the Secretary of State).

²¹ See NYSCEF Doc. No. 39 (Demand under CPLR 511(b) for Change of Place of Trial on the Ground that the County Designated for that Purpose Is Not a Proper County dated October 19, 2020).

²² See NYSCEF Doc. No. 70 (Notice of Motion dated October 19, 2020), Doc. No. 71 (Affirmation of Sarah B. Rogers dated October 19, 2020), Doc. Nos. 72-98 (Exhibits), Doc. No. 99 (Memorandum of Law in Support of Defendant The National Rifle Association’s Motion to Dismiss dated October 19, 2020). LaPierre hereby adopts and incorporates by reference the affirmation and brief submitted by NRA in support of its motion, and joins in the NRA’s motion.

²³ See Correll Affirm. ¶ 13, Ex. 11 (The National Rifle Association’s Motion to Transfer Cases for Coordinated or Consolidated Pre-Trial Proceedings Pursuant to 28 U.S.C. § 1407 dated October 20, 2020).

²⁴ See NYSCEF Doc. No. 108 at ¶ 7.

the NRA's arguments and moving to dismiss on the additional grounds, *inter alia*, that the Court lacks subject matter jurisdiction over the action because the NRA's certificate of incorporation does not state the location of an office in New York County.²⁵ In addition, that same day, LaPierre filed a parallel 511 demand.²⁶ On November 4, 2020, the Attorney General filed a response to LaPierre's 511 demand that was substantially identical to the response she had filed to the NRA's 511 demand earlier.²⁷

LaPierre now moves to change the place of trial of this action on the same grounds as the NRA, again incorporating by reference the papers filed by the NRA in support of its motion to transfer, adopting the statement of facts and argument set forth in the NRA's papers.²⁸ In addition, LaPierre presents additional facts and argument and moves to stay these proceeding for the purpose of changing the place of trial.

III.

SUMMARY OF ARGUMENT

This is an action under Article 11 of the N-PCL. Venue in an action under Article 11 is prescribed by law in N-PCL § 1110, a mandatory venue provision, which states, clearly and unambiguously: "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" For purposes of the statute

²⁵ See NYSCEF Doc. No. 114 (Notice of Motion dated October 30, 2020), Doc. No. 115 (Affirmation of P. Kent Correll, Esq. dated October 30, 2020), Doc. Nos. 116-125 (Exhibits), Doc No. 126 (Memorandum of Law in Support of Defendant Wayne LaPierre's Motion to Dismiss or Stay dated October 30, 2020). See also NYSCEF Doc. No. 132 (Amended Memorandum of Law in Support of Defendant Wayne LaPierre's Motion to Dismiss or Stay dated November 3, 2020).

²⁶ See NYSCEF Doc. No. 131 (Demand for Change of Place of Trial dated October 30, 2020).

²⁷ See NYSCEF Doc. No. 146 (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 dated November 4, 2020); and Doc Nos. 147 – 149 (Exhibits).

²⁸ LaPierre adopts the facts and argument set forth in the NRA's brief (NYSCEF Doc. No. 141, at 2-8 and 9-11).

the term “office of a corporation” is defined as “the office the location of which is stated in the certificate of incorporation”. As shown by the NRA’s certificate of incorporation, “the office the location of which is stated in the certificate of incorporation” is 80 State Street, Albany, New York, which is located in Albany County; therefore, the judicial district in which the office of the corporation was located at the time of the service on the corporation of a summons in this action was the Third Judicial District, which includes Albany County, not the First Judicial District, which includes New York County. Hence, New York County is not a proper county. Accordingly, the Court should change the place of trial of this action to the proper county—*i.e.*, Albany County (or some other county within the Third Judicial District)—pursuant to CPLR 510(1) and N-PCL § 1110, based on the NRA’s certificate of incorporation, which is controlling, and which is conclusive as to the judicial district in which the office of the corporation was located at the time of the service on the corporation of a summons in this action. Moreover, since the change has been sought with due diligence, the Court should stay these proceedings pursuant to CPLR 511(c) for the purpose of changing the place of trial.

IV.

ARGUMENT

A. Legal Standard

CPLR 510 (“Grounds for Change of Place of Trial”) provides, in pertinent part: “The court, upon motion, may change the place of trial of an action where: 1. the county designated for that purpose is not a proper county ***.”²⁹

²⁹ See CPLR 510(1). As to timing and procedure of a CPLR 510 motion, CPLR 511 (“Change of Place of Trial”) provides: “(a) Time for motion or demand. A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served.***. (b) Demand for change of place of trial upon ground of improper venue, where motion made. The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that

Article 11 of the New York Not-for-Profit Corporation Law governs judicial dissolution.³⁰ N-PCL § 1101 (“Attorney-general’s action for judicial dissolution”) provides, in pertinent part:

(a) The attorney-general may bring an action for the dissolution of a corporation upon one or more of the following grounds: ***

(2) That the corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to public policy of the state has become liable to be dissolved. ***

(c) The enumeration in paragraph (a) of grounds for dissolution shall not exclude actions or special proceedings by the attorney-general or other state officials for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state.³¹

N-PCL § 1110 (“Venue”) 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”³² N-PCL § 102 (“Definitions”) provides, in subdivision (a)(11): “‘Office of a corporation’ means 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.”³³ N-PCL § 102 further

specified by the defendant. Defendant may notice such motion to be heard as if the action were pending in the county he specified, unless plaintiff within five days after service of the demand serves an affidavit showing either that the county specified by the defendant is not proper or that the county designated by him is proper.” See CPLR 511(a) and (b). In addition, CPLR 511(c) contemplates a stay of proceedings for the purpose of changing place of trial where the change has been sought with due diligence. See CPLR 511(c) (“Stay of proceeding. No order to stay proceedings for the purpose of changing the place of trial shall be granted unless it appears from the papers that the change is sought with due diligence.”).

³⁰ N.Y. N-PCL, Art. 11.

³¹ N.Y. N-PCL § 1101.

³² N.Y. N-PCL § 1110; see *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935) (“[S]hall ... is the language of command ...”).

³³ N.Y. N-PCL § 102(a)(11).

provides, in subdivision (a)(3): “‘Certificate of incorporation’ includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, ... or other certificates or instruments filed or issued under any statute;”³⁴

N-PCL § 1008 (“Jurisdiction of supreme court to supervise dissolution and liquidation”) provides: “(a) At any time after the filing of a certificate of dissolution under this article, the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution, in a special proceeding instituted under this section, ... in a situation approved by the court, upon the petition of ... the attorney general, ... may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation,”³⁵

B. Venue Is Improper in New York County Based on N-PCL § 1110, Precluding this Court’s Exercise of Jurisdiction Over this Action.

This is an action under Article 11 of the New York Not-for-Profit Corporation Law, which the Attorney General has brought in the supreme court in New York County, which is located in the First Judicial District. In her verified complaint, with respect to venue, the Attorney General alleges: “Venue is properly set 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 office of the NRA is in New York County as set forth in the NRA’s certificate of incorporation.”

Contrary to the Attorney General’s assertion: (1) CPLR 503 does not apply here because venue is “otherwise prescribed by law”—in N-PCL § 1110; and (2) the NRA’s “certificate of

³⁴ N.Y. N-PCL § 102(a)(3).

³⁵ N.Y. N-PCL § 1008.

incorporation” does not “set forth” that “the office of the NRA is in New York County,” but, rather, states: “The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is ...: Corporation Service Company 80 State Street, Albany, NY 12207-2543;” and designates Albany County as the county in which its registered agent would accept service of process on behalf of the corporation.³⁶ In other words, N-PCL § 1110 applies here and CPLR 503 does not.³⁷

Indeed, echoing the mandatory and exclusive language of the venue provision of N-PCL § 1110, section 1008 of the N-PCL, which applies to actions brought under Article 11, expressly limits jurisdiction to supervise dissolution and liquidation to “the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution”.³⁸ Thus,

³⁶ See NYSCEF Doc. No. 71 (Rogers Aff. Ex. 26 at 1); and Correll Affirm. ¶ 11 and Ex. 9; *Gilinsky v. Ashforth Properties Construction, Inc.*, 2019 WL 4575685 *1 (Sup.Ct. New York County Sept. 17, 2019) (finding that designation of county in which registered agent would accept service of process on behalf of corporation established defendant corporation’s residence in that county for venue purposes). See also *Fireman’s Fund Ins. Co. v. Kashmir Krafts, Inc.*, 2d 338, 500 N.Y.S.2d 604 (Civil Court of the City of New York, Special Term, New York County) (explaining: “the office designated in defendants’ certificate of incorporation was care of attorneys in New York County and an office is defined as ‘the office the location of which is stated in the certificate of incorporation’ and such ‘office need not be a place where business activities are conducted’”).

³⁷ See CPLR 503 (stating expressly that it does not apply where venue is “otherwise prescribed by law”).

³⁸ See N-PCL § 1008 (“Jurisdiction of supreme court to supervise dissolution and liquidation”) (“[T]he supreme court in the judicial district where the office of the corporation was located at the date of its dissolution ... may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation,”; *Matter of In re Friends for Long Island’s Heritage*, 80 A.D.3d 223, 232-33 (2d Dep’t 2010) (subject to other article 11 provisions, certain provisions of article 10 (which relates to nonjudicial dissolutions) shall apply. As particularly relevant here, N-PCL 1115 (a) incorporates N-PCL 1008. N-PCL 1008 (a) in turn provides, in relevant part, that the Supreme Court “may make all such orders as it may deem proper in all matters in connection with the dissolution . . . of the corporation . . . ***”); *Matter of Pofit For Dissolution of St. Clare’s Corp.*, 67 Misc.3d 1237(A) (Sup.Ct. 2020) (“It is also clear based on the Court’s reading of Article 11 of the NPCL, that certain provisions contained in Article 10 of the NPCL also apply to proceedings brought under Article 11. NPCL § 1115, entitled “Applicability of other provisions”, provides in pertinent part as follows: (a) Subject to the provisions of this article, *the provisions of* sections 1006 (Corporate action and survival of remedies after dissolution), ... and **1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved under this article.** (b) Any orders provided for in section 1008, may be made at any stage of an action or special proceeding for dissolution of a corporation under this article.... [Emphasis added]. **Thus, NPCL § 1008, which gives the Court wide discretion to supervise the dissolution of a corporation and “make all such orders as it may deem proper in all matters in connection with the dissolution”, applies to this Article 11 proceeding.** See, NPCL § 1008. Accordingly, this Court has the power and discretion to make any orders it deems appropriate at any stage of this proceeding.”) (Emphasis in original; citations omitted.).

compliance with section 1110 should be viewed not only as an exclusive venue provision, but also as a condition precedent to the exercise of jurisdiction to oversee dissolution in an action under Article 11 and as an element of a cause of action for dissolution under Article 11.³⁹

Section 1008 makes clear that the Legislature intended to make the exercise of jurisdiction in an action under Article 11 dependent on the action being brought in the supreme court in the judicial district in which the office of the corporation facing dissolution is located. This makes perfect sense because, otherwise, the court determining whether or not to order dissolution would lack jurisdiction to oversee the dissolution. Thus, the jurisdiction, power and authority of a supreme court to order and supervise dissolution should be viewed as having been expressly conditioned by the Legislature on compliance with the mandatory venue provision of section 1110. It would not make any sense for the Legislature to bestow exclusive jurisdiction to supervise dissolution on the supreme court in the judicial district in which a not-for-profit corporation is located at the time of dissolution, and to enact a specific venue provision requiring that any action under Article 11 be brought in that court, then allow the attorney general to bring an action under Article 11 in any court she liked based on the general “venue based on residence” provision of CPLR 503, despite its express exception for cases where venue is “otherwise prescribed by law”, thereby thwarting the legislative scheme. This is particularly true given that the Legislature has gone to such great pains to enact a substantive statute specifically governing not-for-profit corporations and has taken such great care to include both a specific jurisdiction provision and a specific venue provision, thereby making jurisdiction and venue in the supreme court in the judicial district in which the corporation facing dissolution is located

³⁹ See N-PCL § 1110; *Matter of Pofit For Dissolution of St. Clare’s Corp.*, 67 Misc.3d 1237(A) (Sup.Ct. 2020).

key elements of the statutory scheme, in terms which could hardly be any clearer.⁴⁰ Accordingly, section 1110 must be viewed as a mandatory venue provision that may not be disregarded.⁴¹

Here, LaPierre has presented 149 years' worth of instruments filed in Albany County with the Secretary of State, not one of which states that the office of the NRA is in New York County, and the most recent of which, issued in 2002, sets forth an office address in Albany County.⁴² The documents submitted by LaPierre are undeniable.⁴³ Thus, the documentary evidence properly before the Court establishes the location of the office of the corporation within the State as 80 State Street, Albany, New York, which is in Albany County, and, therefore, establishes that the supreme court in the Third Judicial District, which includes Albany County, is the court in which this action under Article 11 for judicial dissolution should have been filed.⁴⁴ As such, LaPierre has established that venue is not properly laid in this Court and that he is entitled to an order changing the place of trial pursuant to CPLR 510(1) and staying these proceedings for the purpose of changing the place of trial pursuant to CPLR 511(c), based on conclusive documentary evidence—the NRA's certificate of incorporation.⁴⁵

⁴⁰ See *People v. Grasso*, 11 N.Y.3d 64, 72 (N.Y. 2008) (Kaye, C.J.) (affirming order of Appellate Division, First Department, reversing, on the law, an order of the Supreme Court, New York County (Ramos, J.), which had denied a motion by defendant Grasso, pursuant to CPLR 3211(a)(7), to dismiss four causes of action, and granting the motion, stating: "***The Legislature ... enacted a statute requiring more. The Attorney General may not circumvent that scheme To do so would tread on the Legislature's policy-making authority.***") (Emphasis added).

⁴¹ See *supra*, note 38 and accompanying text.

⁴² See Section II, *supra*, at 3-5.

⁴³ See *Estate of Webster v. State of New York*, 2003 N.Y. Slip Op. 50590(U) (Ct. Cl. Jan. 30, 2003), *supra*, note 39 and accompanying text.

⁴⁴ Here, the NRA's certificate of incorporation, as amended, supplemented or restated by certificates of amendment or other certificates or instruments filed or issued under the Not-for-Profit Corporation Law conclusively establishes that, at the time the NRA was served with a summons in this action, the office of the NRA was located in Albany County and that, therefore, this action under Article 11 was required by law to be brought in the supreme court in the Third Judicial District, which means that venue in New York County is improper. The certificate of incorporation resolves all factual issues relating to venue as a matter of law, and, thus, conclusively disposes of the issues of whether venue in this Court is proper and whether the place of trial should be changed pursuant to CPLR 510(1) and these proceedings stayed pursuant to CPLR 511(c) on the ground that venue is improper in New York County.

⁴⁵ *Sicignano v. Hymowitz*, 44 Misc.3d 1212(A), 2014 WL 3583886 *2 (N.Y. Sup.), 2014 N.Y. Slip Op. 51100(U) (Sup.Ct., Kings Co., N.Y. 2014) ("[I]n an action seeking judicial dissolution, Business Corporation Law § 1112 is

In sum, as set forth above, N-PCL § 1110 provides a special venue provision for actions seeking judicial dissolution which is predicated on where the “office of the corporation” is “located” at the time of service of the summons. Indeed, section 1110 mandates that a dissolution action “shall” be brought in the judicial district of that “location,” a provision “otherwise prescribed by law” which nullifies the applicability of CPLR 503. Since the NRA’s “certificate of incorporation” (*i.e.*, as amended in 2002) indisputably does not state the location of any office in New York County, venue in that county is improper.⁴⁶

controlling for determining venue. Business Corporation Law § 1112 prescribes that ‘an action or a 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.’ “Office of a corporation” means the office the location of which is stated in the certificate of incorporation of a domestic corporation” (Business Corporation Law § 102). Here, the plaintiffs clearly seek judicial dissolution of the Corporation, pursuant to Business Corporation Law § 1104-a, and the Certificate of Incorporation states Kings County as the location of the office of the Corporation. Since ‘the office of the corporation’ was located in Kings County at the time Defendants commenced this dissolution proceeding, Kings County is a proper venue. Plaintiffs assert that the Corporation has offices at c/o Hyomwitz & Freeman, 30 E 33rd Street, New York, New York, 10016. However, ‘the sole residence of a domestic corporation for venue purposes is the county designated in its certificate of incorporation, despite its maintenance of an office or facility in another county’. The principal office of the corporation as stated in its certificate ‘is conclusive evidence of its residence’. Hence, Kings County is a proper venue for this action”); *see also Magee v. Geneseo Academy*, 1 N.Y.S. 709, 710-711 (5th Dep’t 1888) (“In this state a court of equity has not, by virtue of its general inherent powers, the right to dissolve a corporation, but such power is entirely statutory, and can only be exercised in a manner sanctioned by the legislature.”); *Osborn v. Montelac Park*, 35 N.Y.S. 610, 611 (2d Dep’t 1895), *aff’d* 153 N.Y. 672 (1897) (“The complaint ..., so far as it applied to an action to dissolve the corporation, was defective in every particular required by the statute. *** The court had no general jurisdiction on the dissolution of the corporation. Its power in that respect was derived solely from the statute, and, unless the complaint showed the jurisdictional facts, it had no power to act, and its decree was void. *** The judgment ... so far as it purports to dissolve the corporation, ... is a nullity.”); *Application of Baumann*, 201 A.D. 136, 138 (1st Dep’t 1922), *aff’d sub nom., In re Baumann*, 234 N.Y. 555 (N.Y. 1922) (“It is undoubtedly true that the proceeding being purely statutory is required to be conducted strictly in accordance with the statute.”) (emphasis added); *People ex rel. Gambling v. Board of Police*, 6 Abb.Pr. 162 (Sup. Ct., General Term, N.Y. 1858) (“When a statute prescribes the mode of acquiring jurisdiction, the mode pointed out must be complied with, or the proceeding will be a nullity.”). *Cf. People v. Grasso*, 11 N.Y.3d 64, 72 (N.Y. 2008) (Kaye, C.J.) (affirming order of Appellate Division, First Department, reversing, on the law, an order of the Supreme Court, New York County (Ramos, J.), which had denied a motion by defendant Grasso, pursuant to CPLR 3211(a)(7), to dismiss four causes of action, and granting the motion, stating: “**The Legislature ... enacted a statute requiring more. The Attorney General may not circumvent that scheme To do so would tread on the Legislature’s policy-making authority.**”) (Emphasis added).

⁴⁶ LaPierre adopts the argument set forth in the NRA’s brief (NYSCEF Doc. No. 141, at 9-11).

C. The Court Should Stay These Proceedings Pursuant to CPLR 511(c) for the Purpose of Changing the Place of Trial Because the Change Has Been Sought with Due Diligence.

Where it appears from the papers that a change of place of trial has been sought with due diligence, a court may grant an order to stay proceedings for the purpose of changing the place of trial.⁴⁷ Here, it is clear from the papers that a change of place of trial has been sought with due diligence, therefore, the Court may and should grant an order staying these proceedings for the purpose of changing the place of trial.⁴⁸

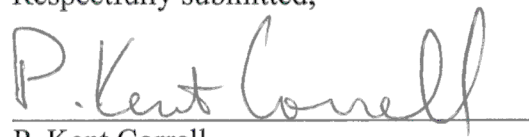
V.

CONCLUSION

For the reasons stated above, pursuant to CPLR 510(1) and 511(a), (b) and (c), and N-PCL § 1110, this motion should be granted, the place of trial changed to Albany County, and these proceedings stayed to allow for a change in the place of trial.

Dated: New York, New York
November 12, 2020

Respectfully submitted,



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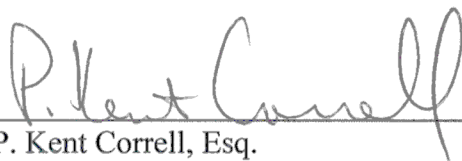
⁴⁷ CPLR 511(c) ("Stay of proceeding. No order to stay proceedings for the purpose of changing the place of trial shall be granted unless it appears from the papers that the change is sought with due diligence.").

⁴⁸ *Id.*

**CERTIFICATION OF COUNSEL OF
COMPLIANCE WITH APPLICABLE WORD LIMITS**

Pursuant to Commercial Division Rule 17 (22 NYCRR 220.70), I hereby certify that this Memorandum of Law in Support of Defendant Wayne LaPierre's Motion for Change of Place of Trial and Stay of Proceedings Pursuant to CPLR 510(1) and 511(c) contains 6,007 words, excluding the parts exempted by Rule 17, and, therefore complies with the 7,000-word limit applicable to memoranda of law.

Dated: New York, New York
November 12, 2020



P. Kent Correll, Esq.