Exhibit 1

November 23, 2020 letter to Hon. Joel M. Cohen
from Intervenors' Counsel George Douglas

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November 23, 2020

Original by FedEx and email to sfc-part3@nycourts.gov

Hon. Joel M. Cohen
Justice, Supreme Court of New York County
60 Centre Street, Room 570
New York, New York 10007

RE: *People v. National Rifle Association of America, Inc., et al.*
Index No. 451625/2020, Attorney General's Petition For Dissolution

Dear Justice Cohen:

I cannot submit this via NYSCEF because my clients are not parties and NYSCEF will not allow me to e-file. Nevertheless my clients are NRA members who did not choose this forum but whose rights may be affected here, and as the authorities below make clear they are entitled to be heard.

The primary issue now before the Court is official notice of this action to all NRA members. My November 11 letter to the Court assumed certain basic principles of due process that the letters of the Attorney General, the NRA's counsel, and counsel for Wayne LaPierre completely disregard. These parties say that notice is either not presently required, or else not required at all, but long-settled constitutional law is against them.

Before reviewing the law of due process it is helpful to recall just exactly what the Attorney General proposes to do in this action, which is to entirely abolish the NRA, take its nearly $200 million in assets from the members for whose benefit those assets exist, and hand the money to other unspecified entities without any notice to the members until *after* the Court has decided to dissolve the NRA.[1]

What constitutional rights of the NRA's 5.5 million members are threatened by this action? The answer is "all of them – every single one, tangible and intangible", including

- their First Amendment freedoms of speech and association to engage in "political speech" and viewpoint advocacy as NRA members (grudgingly acknowledged by NRA Counsel as "constitutional and public policy interests implicated by this case");[2]
- their Fifth and Fourteenth Amendment property rights, individually and collectively, to have the NRA's assets held and used for their benefit as members;

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[1] See the Attorney General's November 19 letter, p. 3, "*After the Court has determined that the Attorney General has satisfied the statutory basis for dissolution, then the interests of the members and the public in dissolving the NRA will be taken into account in accordance with N-PCL § 1109.*"

[2] See November 19 letter from NRA Counsel, p. 2, and s*ee e.g, Williams v. Rhodes,* 393 U.S. 23, 30-31 (1968) ("We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.").

- their Fifth and Fourteenth Amendment due process rights to fair and adequate representation in any action affecting their life, liberty, or property interests, including derivative actions;[3]
- their Fifth and Fourteenth Amendment due process rights against forfeiture of their memberships by State action, and the resulting destruction of their interests in the NRA, without notice and a meaningful opportunity to prepare and contest this; and
- their right as NRA members to the equal protection of laws, i.e., to prevent the Attorney General from targeting the NRA for dissolution when similar alleged wrongs by other corporate executives would be handled administratively as to the tax and reporting issues alleged by the Attorney General, and left to the NRA board and/or NRA members as to derivative claims and other internal issues.

1. Due Process Requires Actual Notice To All NRA Members Before This Action Proceeds.

The constitutionally protected association interests of all NRA members that are threatened in this action would be enough standing alone to justify notice to all members. In *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 795, 800 (1983) the United States Supreme Court said:

> In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950), this Court recognized that *prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment*, a State must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.
>
> (462 U.S. at 795; emphasis added).
>
> *   *   *
>
> Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.
>
> (462 U.S. at 800; emphasis by the Court).

It is clear from the context that "any party" means anyone whose interest in life, liberty,

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[3] *See e.g.*, *Hansberry v. Lee*, 311 U.S. 32, 45 (1940) (representatives whose substantial interests are not the same as those whom they are deemed to represent does not afford the protection to absent parties which due process requires, and presents opportunities for the fraudulent and collusive sacrifice of the rights of absent parties); *Taylor v. Sturgell*, 553 U.S. 880, 900 (2008) (A party's representation of nonparties is not adequate unless her interests are aligned with those of the nonparties, citing *Hansberry*, 311 U.S. at 43); *Richards v. Jefferson County*, 517 U.S. 793, 801 (1996) (representation of absent parties is not adequate where representatives' interests are in conflict with those absent, citing *Hansberry*, 311 U.S. at 42-43).

or property may be affected by the proceeding whether they are a party of record or not. Thus according to *Mennonite Board*, notice by mail or other means "to ensure actual notice" is a prerequisite to *any* action that may adversely affect the life, liberty or property interests of *any* party since 1950 when *Mullane v. Central Hanover Bank* was decided.

These principles would seem to be clear enough. "Any" means <u>any</u> and "prior to" and "precondition" both mean <u>before</u>. As the Court said in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004):

> For more than a century the central meaning of procedural due process has been clear: `Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard `*must be granted at a meaningful time and in a meaningful manner.*' *These essential constitutional promises may not be eroded*.
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> 507 U.S. at 533, citing *Fuentes v. Shevin*, 407 U. S. 67, 80 (1972) (quoting *Baldwin v. Hale*, 1 Wall. 223, 233 (1864); *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965) (other citations omitted; emphasis added).

These rights are absolute, and do not depend upon the merits of a claimant's substantive assertions. *Carey v. Piphus*, 435 U.S. 247, 266 (1978). The standard does not change if the action is characterized as *in rem* rather than personal. *Mennonite Board* forecloses this argument, as the Appellate Division noted in *County of Orange v. Goldman*, 87 N.Y.S.3d 262 (N.Y. App. Div. 2018):

> [T]he United States Supreme Court has explicitly rejected the fiction that an *in rem* proceeding is not asserted against any individuals... The United States Supreme Court's case law has thus 'required the State to make efforts to provide actual notice to all interested parties comparable to the efforts that were previously required only in *in personam* actions'...

87 N.Y.S.3d at 270, citing *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 796 n 3 (1983); and *Schroeder v. City of New York*, 371 U.S. 208, 213 (1962).

Ignoring these principles, the Attorney General's response (p. 3) concedes the NRA's members <u>might</u> be entitled to notice of this action <u>if</u> the Court finds there is a basis for dissolution. NRA's counsel says no notice to the membership is required at all and Mr. LaPierre's response says notice is "inappropriate for this complex plenary action."

The operative terms of *Mennonite Board*, i.e., "*any*", "*prior to*" and "*precondition*", should end the discussion unless the Court is prepared to say that an NRA member has <u>no</u> constitutionally protected life, liberty, or property interest in his or her NRA membership. But that proposition is one that not even the NRA's Counsel will assert, as stated in her November 19 letter, p. 2: "*NRA members certainly have constitutional and public policy interests implicated by this case*".

Notice to the members *after* the core issue has already been decided does not come "at a meaningful time and in a meaningful manner." *Hamdi v. Rumsfeld*, *supra*. Without notice

to all the members now, the vast majority will never know their interests (including the derivative claims) are either not being represented at all, or else are represented by an Attorney General whose stated goal in the Complaint is abolition of the NRA and thus its members' interests in it. NRA Counsel's letter (p. 2) says the parties "have not even begun to discover or present evidence on the matter set forth in Section 1104: "why the corporation should not be dissolved." Those NRA members who may decide to contest dissolution should have the same opportunity to "discover and present evidence", but notice *after* the issue is decided denies them that opportunity, and the ability to evaluate the action themselves and decide whether to seek intervention, whether individually or collectively.[4]

NRA's Counsel advances the even more preposterous argument that its members don't deserve *any* notice because they really aren't "persons interested in the corporation". Of course this ignores the statutory definition of N-PCL § 102(a)(9), that a non-profit corporation member is "*... one having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or by-laws*".[5]

NRA Counsel then goes on to minimize NRA members' rights as much as possible, admitting that they "certainly have constitutional and public policy interests " but claiming this case is *in rem* and the members "only" substantive right is their right to vote. This totally ignores their First Amendment speech and associational rights, yet comes from an attorney for the NRA that ostensibly represents its members here. Regardless, the *in rem* argument is completely refuted by *County of Orange v. Goldman, supra.*

The Attorney General's contention that § 1104 is inapplicable because this is a "plenary action for dissolution, not a petition" overlooks the fact that the complaint is also a petition to enforce the rights of a director, officer or member under §§ 112(a)(7) and 1102(a)(2).[6] In such a case the second sentence of § 112(a)(7) provides: "*The attorney-general shall have the same status as such members, director or officer*", which necessarily includes § 1104's notice requirement. But even if this action were merely a "plenary action for dissolution" notice would still be required by the Fourteenth Amendment's Due Process clause.

The Court is not presently required to decide what if any "privacy issues" may arise when notice is ordered. Class actions and large bankruptcy cases deal with these issues, if they are truly issues, on a regular basis.

Mennonite Board of Missions is only one example from the myriad of due process cases holding that notice must be given *prior to* any action affecting any interest in life, liberty, or property, and the parties' arguments to the contrary must be rejected. Any construction of N-PCL § 1104 that allowed the Attorney General to avoid giving notice to the NRA's members now would render it unconstitutional as applied in this case.

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[4] As the U.S. Supreme Court said in *Mullane v. Central Hanover Bank*, *supra* at 314, "the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

[5] NRA members have such rights under Article III of the NRA's Bylaws. (Doc. # 3; Ex. 1 to the Complaint, p. 6-11).

[6] Amended Complaint (Doc. #11) ¶ 12; Second Cause of Action ¶ 576, 577; Eighteenth Cause of Action ¶ 647; and Prayer for Relief ¶ A and ¶ C.

2. *Neither withdrawal of the Brewer firm from the Ackerman case nor the affidavit of Wayne LaPierre cures the conflict of interest in this action*.

Counsel for the NRA and Mr. LaPierre both state in their letters that the Brewer firm has withdrawn from the *Ackerman* case and that Mr. LaPierre now has separate counsel. What is left unsaid is when that withdrawal occurred, although Para. 9 of the LaPierre affidavit (Doc. # 175) gives the impression this occurred on or about August 9 when the Attorney General filed this action. In fact it did not.

Exhibit # 1 to this letter is a copy of the first and last pages in the PACER docket report for *Ackerman* as of November 19, 2020. The highlighted entries on the second page show that the Brewer firm did not withdraw from *Ackerman* until November 18, 2020 (seven days after my letter of November 11). One can only wonder whether this would have occurred at all but for that letter.

Brewer's withdrawal from *Ackerman* and Wayne LaPierre's affidavit do not eliminate the conflict here. It remains beyond dispute that Brewer's dual representation of the NRA and LaPierre would have led to Brewer's acquisition of privileged and confidential information from both the NRA and LaPierre. The conflict waivers referenced in the LaPierre affidavit do not waive the obvious conflict resulting from Brewer's dual representation for anyone other than LaPierre, nor could they do so. The LaPierre affidavit refers to a "Special Litigation Committee", but Mr. LaPierre does not say that the NRA Board or the Special Litigation Committee ever approved a waiver of this conflict.

Likewise, the affidavit of NRA President Carolyn Meadows (Doc. 178) states that she appointed the Special Litigation Committee. Ms. Meadows does not say that the NRA Board ever authorized the Special Litigation Committee to approve a waiver of this conflict, nor does she say that the Board itself ever approved such a waiver.

The Meadows affidavit and the letter from NRA Counsel reveal one of the potential conflicts anticipated in my November 11 letter.

There are numerous allegations in the Complaint relating to Brewer's charges, including ¶ 454 (that the NRA was paying the Brewer firm about $2 million per month in fees that were not properly authorized or reviewed); ¶ 457 (between March 2018 and February 2019 the Brewer firm charged the NRA approximately $19,000,000 in legal fees); ¶ 458 (the Audit Committee determined that the original contract between the NRA and the Brewer firm did not comply with the internal controls and policies established by the NRA); ¶ 462 (neither the Audit Committee nor others on the NRA Board were permitted to conduct a review of the Brewer firm's invoices, and no outside firm ever examined the reasonableness of the legal fees that the firm was charging, or whether the legal services performed were consistent with the scope of their engagement); and ¶ 558(f) (the NRA has authorized and expended significant institutional funds (in excess of $54 million) for payments to the Brewer firm without consideration of the factors set forth in 552(e)(1) of the New York Prudent Management of Institutional Funds Act).

Despite these allegations, and the likelihood that one or more lawyers from the Brewer firm will necessarily be called as a witness to explain or defend them, either by the Attorney General or a member-intervenor, both the Meadows affidavit and the letter from NRA

Counsel state that the NRA has no intention of calling counsel as a witness. Again, these statements are made without any indication that the NRA Board has ever investigated these matters or authorized either Ms. Meadows or NRA counsel to take such a position.

As my November 11 letter noted, independent counsel might well conclude that Brewer's charges during the first quarter of 2019 averaging $97,787 per day, seven days a week, every week of every month appeared to be excessive. The Meadows affidavit and NRA Counsel's letter make it clear that this will not happen on their watch.

Conclusion

The Court should direct the Attorney General to give meaningful notice of this action, i.e., that describes the nature of the claims and the potential outcome of the case, to all NRA members by mail or other means suitable to insure actual notice, as well as the other classes of persons described in N-PCL § 1104.

Consideration of the conflict issues as to NRA counsel should be deferred until all members, creditors and claimants have been served and given the opportunity to be heard on both the venue and conflict questions. Only then should the Court consider the defendants' pending motions.

Respectfully,

George C. Douglas, Jr.

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FILING NOTE: This is not a duplicate Exhibit 1. It was an exhibit to, and is part of, the foregoing l
etter to the Court that is Exhibit 1 to the ProposedAn
swer with Counterclaims and Crossclaims.

Exhibit 1

Excerpt from U.S. PACER Docket for
Nat'l Rifle Ass'n of Am. v. Ackerman McQueen, et al.,
Civ. No. 3:19-cv-02074-G (N.D. Tx.)
as of November 19, 2020

DISCREF,JURY

U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:19-cv-02074-G-BK

National Rifle Association of America v. Ackerman McQueen Inc et al
Assigned to: Senior Judge A. Joe Fish
Referred to: Magistrate Judge Renee Harris Toliver
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/30/2019
Jury Demand: Both
Nature of Suit: 890 Other Statutes: Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

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TERMINATED: 03/26/2020
Bar Status: Admitted/In Good Standing

Jordan Andrew Welch
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Apartment 203

		therefore ORDERED that Daniel D. Tostrud, William D. Cobb, Jr., and Matthew E. Last of the law firm Cobb Martinez Woodward, PLLC are hereby withdrawn as attorneys of record for non-parties William A. Brewer III and Brewer, Attorneys & Counselors. It is further ORDERED that Daniel D. Tostrud, William D. Cobb, Jr., and Matthew E. Last of the law firm Cobb Martinez Woodward, PLLC are hereby relieved of any further obligations as counsel to the court or to non-parties William A. Brewer III and Brewer, Attorneys & Counselors. (Ordered by Senior Judge A. Joe Fish on 10/23/2020) (chmb) (Entered: 10/23/2020)
10/23/2020	180	Joint STATUS REPORT *IN CONNECTION WITH PLAINTIFFS MOTION TO COMPEL AND FOR SANCTIONS (ECF NO. 47), AND DEFENDANTS MOTION TO COMPEL PLAINTIFFS DOCUMENT PRODUCTION AND MOTION FOR SANCTIONS (ECF NO. 54)* filed by Ackerman McQueen Inc, Jesse Greenberg, Henry Martin, Mercury Group Inc, Melanie Montgomery, William Winkler. (Mason, Brian) (Entered: 10/23/2020)
10/23/2020	181	(Document Restricted) Sealed MOTION FOR LEAVE TO FILE UNDER SEAL CERTAIN EXHIBITS TO JOINT STATUS REPORT IN CONNECTION WITH PLAINTIFFS MOTION TO COMPEL AND FOR SANCTIONS (ECF NO. 47), AND DEFENDANTS MOTION TO COMPEL PLAINTIFFS DOCUMENT PRODUCTION AND MOTION FOR SANCTIONS (ECF NO. 54) (Sealed pursuant to motion to seal) filed by Ackerman McQueen Inc, Jesse Greenberg, Henry Martin, Mercury Group Inc, Melanie Montgomery, William Winkler (Attachments: # 1 Exhibit B-2 Under Seal, # 2 Exhibit B-3 Under Seal, # 3 Exhibit B-4 Under Seal, # 4 Exhibit B-5 Under Seal, # 5 Exhibit B-6 Under Seal, # 6 Exhibit B-7 Under Seal) (Mason, Brian) (Entered: 10/23/2020)
11/05/2020	182	ORDER OF REFERENCE re: 181 (Document Restricted) Sealed MOTION FOR LEAVE TO FILE UNDER SEAL CERTAIN EXHIBITS TO JOINT STATUS REPORT IN CONNECTION WITH PLAINTIFFS MOTION TO COMPEL AND FOR SANCTIONS (ECF NO. 47), AND DEFENDANTS MOTION TO COMPEL PLAINTIFFS DOCUMENT PRODUCTION AND MOTION FOR SANCTIONS (ECF NO. 54) is hereby REFERRED to United States Magistrate Judge Rene Harris Toliver for a hearing, if necessary, and for determination. (Ordered by Senior Judge A. Joe Fish on 11/5/2020) (ykp) (Entered: 11/05/2020)
11/18/2020	183	MOTION to Withdraw as Attorney *Michael J. Collins*, MOTION to Substitute Attorney, *Phillip Kent Correll* added attorney Michael J Collins. Motion() filed by Wayne Lapierre (Attachments: # 1 Proposed Order) (Collins, Michael) (Entered: 11/18/2020)
11/18/2020	184	NOTICE of Attorney Appearance by Philip Kent Correll on behalf of Wayne Lapierre. (Filer confirms contact info in ECF is current.) (Correll, Philip) (Entered: 11/18/2020)
11/18/2020	185	ORDER granting Wayne Lapierre's 183 Motion for Withdrawal and Substitution of Counsel. Michael J. Collins is permitted to withdraw as counsel for LaPierre; P. Kent Correll is permitted to substitute as counsel for Lapierre. (Ordered by Senior Judge A. Joe Fish on 11/18/2020) (twd) (Entered: 11/18/2020)
11/18/2020	186	ELECTRONIC STATUS REPORT ORDER: The parties are **ORDERED** to confer regarding the *Motion to Quash Third Party Subpoena on Integris Health, Inc.*, Doc. 83 , and file a joint status report advising whether the motion is fully or partially moot in light of the Court's ruling in case number 3:20-MC-21-G-BK, and, in the event of the latter, what issues remain unresolved. The joint status report must be filed by **November 30, 2020**. (Ordered by Magistrate Judge Renée Harris Toliver on 11/18/2020) (Magistrate Judge Renée Harris Toliver) (Entered: 11/18/2020)

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Transaction Receipt			
11/19/2020 19:16:53			
PACER Login:	GeorgeDouglas:2839262:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	3:19-cv-02074-G-BK
Billable Pages:	30	**Cost:**	3.00