

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, COMMERCIAL DIVISION**

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,

FRANCIS TAIT, JR., and MARIO AGUIRRE,  
individually and derivatively on behalf of THE  
NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC.,

Intervenors-Defendants, Cross  
Claimants, and Counter  
Claimants.

**Index No. 451625/2020**

**PROPOSED ANSWER IN  
INTERVENTION WITH  
COUNTERCLAIMS AND  
CROSSCLAIMS BY FRANCIS TAIT,  
JR., and MARIO AGUIRRE, TO THE  
AMENDED COMPLAINT**

Intervenors-Defendants (hereafter “Intervenors”), by and through their undersigned counsel, respond to the Plaintiff’s Amended Complaint (NYSCEF Doc. # 11, hereafter “the Complaint”) as follows:

**ANSWER**

1. As to all allegations of paragraphs 1 through 666, Intervenors admit that:
  - a. The parties are accurately identified;
  - b. The Court has jurisdiction of the parties and this action;
  - c. Venue is proper in this Court;

d. The Attorney General has general supervisory powers over New York non-profit charitable corporations and their officers and directors under the New York Not-for-Profit Corporation Law (“N-PCL”); and

e. That the Attorney General has alleged facts and conduct by the Individual Defendants LaPierre, Phillips, Frazer and Powell which if proven would violate New York law and subject them as individuals to the liabilities, damages, restitution and other penalties or remedies alleged and sought by the Attorney General.

2. As to all allegations of paragraphs 1 through 666, Intervenor specifically deny the following:

a. Intervenor deny that any of the alleged actions and conduct of the Individual Defendants can be charged against or attributed to the NRA as an entity, or serve as any basis for its dissolution;

b. Intervenor deny that New York law allows the Attorney General to seek dissolution of the NRA under the facts and circumstances alleged here;

c. Intervenor deny that the Attorney General’s conclusions of law regarding dissolution as to the NRA are correct; and

d. Intervenor deny that dissolution of the NRA is a lawful, proper or appropriate remedy in this action.

3. As to all other allegations of paragraphs 1 through 666, Intervenor respectfully state that they lack knowledge or information sufficient to form a belief as such allegations, which are therefore denied.

**INTERVENORS' AFFIRMATIVE DEFENSES,  
COUNTERCLAIMS, CROSSCLAIMS, & DERIVATIVE CLAIM**

**PRELIMINARY STATEMENT**

4. Intervenor, members of the National Rifle Association of America, Inc. ("NRA"), recognize and appreciate the Attorney General's action in seeking to hold the individual NRA executive defendants accountable when the NRA Board of Directors has failed to do so. But for this suit, no individual members such as Intervenor would likely ever be able to overcome the complete control of Wayne LaPierre over the NRA and the complete lack of any effective oversight by the NRA Board. The NRA Board is not independent and no meaningful change in the NRA's governance will occur as long as the individual defendants, and particularly defendant LaPierre, remain in control of the NRA. Thus, as more fully set forth hereinafter, Intervenor support the Attorney General's demand for removal of the individual defendants from their NRA positions and recovery of all funds shown to have been wrongfully spent or appropriated by them, whether paid directly to an individual defendant or to a third party who has not been joined in this case. To the extent possible, Intervenor seek to work with the Attorney General in reforming the NRA's leadership on behalf of all rank-and-file NRA members, while opposing those demands of the Attorney General that are not in the best interest of the NRA or its membership.

5. The NRA operated successfully for over 100 years prior to Wayne LaPierre and his associates gaining control of it, and will continue to do so once they are removed. Wayne LaPierre and those aligned with him are not the NRA. The current LaPierre-controlled Board of Directors is not the NRA. The LaPierre-controlled executive leadership is not the NRA. The rank-and-file membership across our fifty states is the true NRA. Defendants LaPierre, Frazer, Phillips and Powell are (and in the case of Phillips and Powell, were) merely placeholders

entrusted with the duty to serve the NRA; and if the allegations herein and in the Attorney General's Complaint are proven, we stand with the Attorney General in seeking to remove the executive cancer that has threatened and continues to threaten to take down this storied organization and which has been allowed to fester and metastasize for far too long. This is because, through all of the Attorney General's 666 paragraphs of allegations, one simple fact remains true – the wrongs she alleges were not committed on behalf of, or for the benefit of, the NRA and its membership but were committed solely to benefit the personal interests of Mr. LaPierre and his favored friends. These people *used* the NRA to serve only their own ends, and neither the extent of their wrongs, the number of faithless individuals involved, nor the period of time over which these wrongs were perpetrated can change the fact that these were wrongs perpetrated *against* the NRA and its membership, who placed their resources and trust in these individuals as fiduciaries that were duty-bound to put the members' interests ahead of their own. This they did not do.

6. Intervenor bring this Complaint in Intervention to hold Defendants LaPierre, Frazer, Phillips and Powell liable for their breach of fiduciary duties and corporate waste, and for declaratory and injunctive relief to prevent the Attorney General from dissolving the NRA as an unnecessary, extreme, unlawful, and factually unsupportable remedy for any harm caused to it by the individual defendants.

7. Intervenor are members of the NRA. As such, they, like all other NRA members, have valuable membership rights, including the right to have the NRA's assets used for their benefit to establish and continue NRA member programs for firearm safety, education and training as well as programs for shooting range development, standards and certification. Further, like all other NRA members, the Intervenor have the constitutional right to freely

associate with other NRA members to advance their common interests and viewpoints.

Dissolution of the NRA would completely destroy these rights

8. As NRA members, the Intervenors have a statutory right to be heard in opposition to its judicial dissolution, and to insist that all NRA members be given notice of this action before this action proceeds any further. [N-PCL § 1104\(a\)](#) provides:

Upon the presentation of such a petition [for judicial dissolution], the court shall make an order requiring the corporation and all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than four weeks after the granting of the order, why the corporation should not be dissolved. (Emphasis added).

[N-PCL § 1104](#) further requires that the show cause order be published and personally served on (i) the state tax commission, (ii) the corporation, (iii) each person named in the petition, and (iv) each member, creditor or claimant of the corporation except those whose addresses are unknown and cannot with due diligence be ascertained. The petition described in Sec. 1104 has now been presented to the Court by the Attorney General. The Attorney General's complaint seeks to impair or completely destroy the rights of all NRA members, including the Intervenors, to the continuation of the NRA's mission and programs for their use and benefit. Accordingly, due process under the federal and New York constitutions, as well as [§ 1104](#), requires that each member must be given meaningful notice of this action and a meaningful opportunity to contest the Attorney General's dissolution claims. The Attorney General's derivative claims seek to enforce the rights of a director, officer or member under N-PCL §§ [112\(a\)\(7\)](#) and [1102\(a\)\(2\)](#), and 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. Moreover, even if this action were only a plenary action for dissolution, notice would still be required before proceeding farther by the

Fourteenth Amendment's Due Process clause and similar New York constitutional law.

9. Intervenor's further allege that they have real and substantial interests in this action which will not be adequately represented or protected by any of the present parties, although they will be bound by the judgment along with all other NRA members, which the NRA has reported as approximately 5.5 million.

10. Intervenor's interests in this action are as follows:

a) Intervenor's seek to assure the statutory notice required by [N-PCL § 1104](#) is given to all NRA members prior to further proceedings in this action. If granted intervention, Intervenor's will promptly move the Court to require the Attorney General's compliance with this statute.

b) Intervenor's seek to assure that the NRA has independent and conflict-free counsel in this action, which the NRA's present counsel cannot provide.

c) Intervenor's seek to enjoin the Attorney General's demand for dissolution as an unnecessary, extreme, unlawful and factually unsupportable remedy for the harm allegedly caused to the NRA by the individual defendants' alleged breaches of fiduciary duty. The Attorney General's complaint alleges individual misconduct by the individual defendants in this action that cannot be imputed to the NRA for the following reasons:

- i. These allegations describe individuals acting entirely for their own or another's purposes, adversely to the NRA and its members, and their actions (if proven) totally abandoned the interests of the NRA and its members.
- ii. Indeed, the Complaint alleges the individual defendants and other unnamed directors or members in control of the NRA abused their positions for their own personal benefit and "looted or wasted the corporate assets, have perpetuated the corporation *solely for their personal benefit*, or have otherwise acted in an illegal, oppressive or

fraudulent manner.” (¶¶ 2, 8, 12, 140, 299, and 578; emphasis added).

- iii. Thus, the wrongful acts alleged by the Attorney General (if proven) were committed *against* the NRA and its members rather than on its behalf, and in such instances dissolution is improper. Fraud *against* a corporation is not the same as fraud *on behalf* of the corporation, and the former will not justify dissolution.
  - iv. The Attorney General has *not* alleged that the NRA is incapable of continuing its core missions and programs if the individual defendants are removed from their positions, nor can this essential predicate for judicial dissolution be proven.
  - v. Dissolution of the NRA is not authorized under [N-PCL§ 1101](#) because neither of the two grounds for judicial dissolution exist here: (1) the NRA did not procure its formation by fraud or concealment of a material fact, and (2) as an entity distinct from the individual misconduct the Attorney General alleges, the NRA has not exceeded its legal authority, has not violated any law whereby it has forfeited its charter; has not carried on its business in a persistently fraudulent or illegal manner, and has not abused its powers contrary to public policy.
- d) The Attorney General's complaint demands recovery of restitution and damage from the individual defendants. However, although the complaint mentions a number of instances in which the individual defendants have made or authorized improper payments and benefits to third parties, the Attorney General has made no claims against those third parties on behalf of the NRA. Intervenor seeks to review and recover all such payments for the benefit of the NRA.
- e) Although the Attorney General purports to be acting on behalf of the NRA in making derivative claims against the individual defendants, her demand for dissolution would effectively transfer any recovery to other charitable entities. Intervenor opposes the distribution of any such

funds recovered to any entity other than the NRA and assert that any and all monetary recoveries in this action should be retained by the NRA to continue its core mission and programs for the use and benefit of all NRA members, including Intervenors.

f) Intervenors seek a determination of whether the various professional, consulting and vendor fees enumerated in the Complaint were excessive and/or not validly authorized, including the legal fees referred to in paragraphs 457-472; and if so, Intervenors seek recovery for the NRA of all such amounts.

g) Intervenors seek to protect their personal constitutional rights as NRA members to freedom of association, freedom of speech, and due process of law, as well as to prevent the impairment or forfeiture of their NRA membership by dissolution, which would effectively impose excessive fines or forfeitures against the NRA and its members for the alleged wrongful acts of the individual defendants acting for their own personal benefit.

h) Intervenors seek removal of the individual defendants and any other NRA members or directors acting with them from their NRA positions if the alleged breaches of duty and other misconduct are proven.

11. Contrary to the Attorney General's dissolution demand, if the Complaint's allegations of the individual defendants' misconduct are proven, then the Intervenors seek continuation of the NRA and return of control to its members by removal of the individual defendants and the NRA Board of Directors, and the appointment or election of new leadership, including if determined to be necessary the appointment of a temporary receiver pursuant to [N-PCL § 1111](#) to assure and direct a new general election of Board members by the NRA membership.

12. Intervenors' interests, like those of all other NRA members, will not be adequately protected by the existing parties to this action for the following reasons:



a) The Attorney General will not represent or protect any interests of the Intervenors or the NRA's other 5.5 million members. Although purporting to assert derivative claims of the NRA against the individual defendants under N-PCL [§ 623](#) and [720](#), the Attorney General has *not* filed this suit to benefit the NRA or its members. In actuality the Attorney General seeks to destroy the NRA and liquidate and give away its assets without any allegation, proof or apparent consideration of whether the NRA is incapable of continuing its core missions and programs if the individual defendants are removed from their positions.

b) The allegations of the Complaint make the individual defendants adverse to the NRA as an entity. These defendants will not demand examination by the Court and the parties of the outside vendor fees they allegedly approved and caused to be paid, and they will certainly not pursue their own removal or their payment of restitution to the NRA.

c) The Complaint alleges that Defendant LaPierre “effectively dominates and controls the Board of Directors as a whole.” (¶ 412). If this is true then the NRA has no independence as a separate entity because Mr. LaPierre controls whatever claims the NRA does or does not assert against him in this action, and thus the NRA cannot adequately protect the rights and interests of Intervenors and all other NRA members.

d) The NRA's Chapter 11 bankruptcy filing earlier this year is just the latest example of Mr. LaPierre's domination and control. On January 15, 2021 Mr. LaPierre signed and filed a Chapter 11 Bankruptcy Petition in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, Case # 21-30085. The Petition was purportedly authorized by the NRA's "Special Litigation Committee". On May 11, 2021 the Bankruptcy Court dismissed the Ch. 11 case, finding that it was not filed in good faith. (Doc. # 740, attached as Exhibit # 3 to Intervenors' Memorandum In Support Of Intervention filed concurrently herewith. The Court

found as a fact that *"Throughout the entirety of the board meeting [that purportedly authorized the Ch. 11 filing], both in the general and executive sessions, no discussion of bankruptcy, Chapter 11, or the possible reorganization of the NRA occurred. The board of directors was not informed that the language cited above could authorize Mr. LaPierre to unilaterally authorize a petition for bankruptcy relief for the NRA. In fact, the board of directors was not informed that the NRA was considering filing for bankruptcy at all.* Dismissal Order, Doc. # 740, p. 8. The Court also said that *"What concerns the Court most though is the surreptitious manner in which Mr. LaPierre obtained and exercised authority to file bankruptcy for the NRA. Excluding so many people from the process of deciding to file for bankruptcy, including the vast majority of the board of directors, the chief financial officer, and the general counsel, is nothing less than shocking."* Id., at p. 34.

e) The NRA's current law firm, Brewer Attorneys & Counselors ("BAC"), will not advise the NRA to seek review of BAC's fees in this action or their repayment if those fees are found to be excessive, nor will BAC advise the NRA to pursue any claims against Defendant LaPierre. This is so because BAC has previously represented both the NRA and Mr. LaPierre in a case now pending in the U.S. District Court in Dallas, Texas, *National Rifle Assn. of America v. Ackerman McQueen Inc. et al*, No. 19-CV-02074-G-BK. In that action a counterclaim against the NRA and a third-party complaint against Mr. LaPierre made many of the same allegations of fraud and misuse of NRA funds that the Attorney General makes in this action. (Exhibit 1 attached hereto).

f) This dual representation creates these conflicts of interest for BAC:

i. BAC cannot advise or represent the NRA in this action against LaPierre for breach of his fiduciary duties after previously defending him against the same or similar claims

in Texas. Because of its previous dual representation of the NRA and LaPierre, BAC was in a position to acquire confidential and privileged information from both the NRA and LaPierre in the Texas action. In the present action BAC would be duty-bound to disclose to the NRA all information thus acquired and use it against LaPierre, which BAC could not do because it would be adverse to LaPierre as a former client.

- ii. Thus BAC cannot advise the NRA what action, if any, to take on any of the NRA's potential derivative claims against LaPierre here without a conflict of interest as to one or the other. The same conflicts would prevent BAC from advising either the NRA or LaPierre on the numerous privilege claims that will likely arise in this litigation. For example, if as the NRA's counsel, BAC knew of evidence tending to prove LaPierre's culpability, BAC would be duty-bound to use that in the NRA's claim against him here, while as LaPierre's counsel, BAC would be duty-bound to use every lawful means to prevent the same evidence from ever seeing the light of day.
- iii. Further, if LaPierre “effectively dominates and controls the Board of Directors as a whole,” he can prevent the NRA from pursuing any claims against him, and BAC cannot advise the NRA to do so.
- iv. The Complaint contains several allegations that BAC's legal bills were not properly audited. The letter attached hereto as Exhibit 2 was an exhibit to an answer and counterclaim in *National Rifle Association v. North*, NYSCEF Index # 653577/2019, Doc. No. 10, Exhibit 1. This letter from the NRA's then-President and first Vice-President to the NRA's General Counsel and Audit Committee Chair details BAC's legal bills to the NRA that averaged “\$97,787 per day, seven days a week, every day of every month” for the first quarter of 2019. Generating these fees would require 10

lawyers billing \$1,000 an hour each, averaging 9.7 hours of work per day per lawyer, for every day of every week during that quarter. However, the Attorney General makes no demand for review of these charges nor any demand for their recovery if found to be unreasonable, and BAC is hopelessly conflicted on advising the NRA whether to make such a review and claim here.

- v. Given the Attorney General's allegations regarding BAC's fees, BAC knows or should know that one or more of its lawyers will be a material witness in this action.<sup>1</sup>
- vi. Further, BAC cannot possibly advise the NRA on whether to review and audit its legal bills, or whether to demand repayment of any BAC fees found to be excessive.
- vii. These conflicts were addressed in detail by both the Bankruptcy Court and the U.S. Bankruptcy Trustee in the Chapter 11 case. See Exhibits 3 and 4 to Intervenor's Memorandum In Support Of Intervention filed concurrently herewith.

g) Moreover, when BAC filed a "Notice of Rejection" for the NRA in the present case on August 9, 2020, and stipulations and letters to Judge Lebovits in September 2020, BAC was also simultaneously representing Wayne LaPierre and the NRA in another federal action in the Middle District of Tennessee, *Dell'Aquila vs. LaPierre et al.*, No. 3:19-cv-00679. BAC represented both the NRA and LaPierre from August or September 2019, shortly after the action was filed, until September 30, 2020 when LaPierre was dismissed as a defendant. Excerpts from the PACER file are attached hereto as Exhibit 3. This action also alleged fraud and misconduct against LaPierre (Exhibit 2, pp. 4 & 5), and as with the Texas action, it is simply not possible that BAC did not acquire privileged and confidential information from both the NRA and

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<sup>1</sup> BAC would be conflicted on privilege issues as well as substantive ones. For example, BAC could assert lawyer-client privilege to avoid disclosure of its NRA invoices and billing records to the Intervenor and other parties. However, the NRA would not be subject to that privilege and could demand all supporting documents for BAC's bills and BAC could not possibly avoid a conflict in advising the NRA whether to demand production of those records.

LaPierre as the result of its dual representation there.

h) BAC has an additional conflict due to its previous and continuing relationship with defendant John Frazer, the NRA's General Counsel. The affidavit of Mr. Frazer attached hereto as Exhibit 4 was an exhibit in *People v. Ackerman McQueen and Nat'l Rifle Assn.*, NYSCEF Index # 451825/2019, Doc. # 26. In paragraph 2 of this affidavit, Frazer states that as NRA's General Counsel he supervises outside counsel representing the NRA in the *Ackerman* litigation and "inquiries" by the New York Attorney General. As NRA's counsel in *Ackerman*, BAC is indisputably "supervised" by Frazer, giving rise to the same conflicts here as from BAC's relationship with LaPierre.

i) As a result of these conflicts, the NRA as an entity will not pursue any claims against the individual defendants as long as the NRA is controlled by LaPierre and advised by BAC while being "supervised" by Frazer. It is likewise certain that BAC cannot independently advise the NRA here, and that the Attorney General is conflicted on raising BAC's dual representation even if she has standing to do so, which is doubtful.

j) Thus no present party will raise the BAC/NRA conflict issue.

k) Likewise no present party will adequately protect Intervenors' constitutional rights enumerated above, which are fundamental elements of their personal liberty that they are entitled to assert against the Attorney General.

l) Further, the individual defendants have allegedly acted for their personal benefit against the interests of the NRA and its members, including Intervenors, and the individual defendants therefore are or may be likely to subordinate the interests of the NRA and Intervenors to their own interests in avoiding individual liability. The individual defendants would have a strong personal incentive to enter into a settlement with the Attorney General under which the

NRA paid the fines and penalties for their alleged misconduct and which imposed only minimal liability on themselves. Likewise, if BAC's fees were found to be excessive, it would have a similar incentive to recommend such a settlement at the expense of the NRA and its members.

### **DERIVATIVE ALLEGATIONS**

13. The NRA is named as a nominal defendant solely in a derivative capacity.

14. Intervenors will adequately and fairly represent the interests of the NRA in enforcing and prosecuting its rights.

15. Intervenors failed to serve a litigation demand on the LaPierre-controlled Board of Directors because it is readily apparent that such an effort would have been futile. As explained above, the Board's independence is compromised and the majority of members were complicit in the much of the misconduct alleged herein, either actively or by their failure to exercise independent oversight.

16. As alleged by the Attorney General, the NRA's Board of Directors "passively rubberstamped the decisions of the officer-defendants, to the detriment of the NRA." Complaint, ¶ 159. Thus, the NRA could not evaluate the truth and strength of its potential derivative claims independently, much less assert them.

17. Further, the Board could not independently consider a pre-suit demand for litigation because doing so would require the Board members to scrutinize their own misconduct.

18. Seeking change, Intervenor Tait ran for a seat on the board of directors this year but to no avail.

19. Accordingly, demand is futile, and thus, excused.

20. In the event demand is not deemed futile, the alleged violations are so egregious on their face that they cannot be the product of sound business judgment of the directors.

21. The Board's intentional ignorance and inaction in the face of such egregious misconduct by its leadership demonstrates that the Board abdicated its oversight of the NRA's practices such that it could not validly exercise its business judgment.

### **AFFIRMATIVE DEFENSES**

22. Intervenors deny that the Attorney General's claim for dissolution is properly brought. As alleged hereafter the petition for dissolution violates numerous federal and state constitutional rights of the NRA and its members, both individually and collectively.

23. Intervenors further deny that dissolution is an available or proper remedy in this action because the NRA is fully capable of continuing to serve its members and their interests once the individual defendants, and the "rubberstamp" board members as alleged by the Attorney General, who acted with the defendants or otherwise failed to properly oversee and prevent their conduct, are removed from their positions and new leadership and directors are elected by the members.

24. Intervenors further deny that any of the wrongful acts of any individual defendant herein can be attributed to the NRA as an entity, or that any such actions can serve as the basis for dissolution of the NRA. The Attorney General's complaint repeatedly alleges that the individual defendants were acting solely for their own personal benefit, and accordingly their actions cannot be charged against the NRA. *See e.g., [Kirschner v. KPMG LLP](#)*, 938 N.E.2d 941, 952-953; 15 N.Y.3d 446, 466-468; 912 N.Y.S.2d 508, 519-520 (N.Y. 2010).

25. This action may not proceed until and unless the notice specified by [N-PCL § 1104](#) has been given to all NRA members and other persons or entities described in that section and published as provided therein.

26. The Attorney General has alleged facts justifying the removal of the individual defendants from their positions with the NRA and recovery of damages, restitution, interest and

penalties from them on behalf of the NRA and for the use and benefit of its members. However, the Attorney General's demand for dissolution is an abuse of her office because it is brought for political purposes and is a selective prosecution and application of N-PCL §§ [112](#) and [1101](#).

27. As further alleged hereafter, the Attorney General's demand for dissolution of the NRA in this action is barred by the [1<sup>st</sup>](#), [8<sup>th</sup>](#) and [14<sup>th</sup>](#) Amendments to the U.S. Constitution, and Article I, §§ [6](#), [8](#), [9](#) and [11](#) of the New York Constitution.

### **CROSS-CLAIMS AGAINST DEFENDANTS**

#### **FIRST CROSS-CLAIM**

#### **Declaratory Judgment that NRA Counsel Is Conflicted and Injunction Against BAC's Continued Representation of the NRA (On Behalf of the NRA Against All Defendants)**

28. Intervenor's repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

29. As NRA members faced with the loss of their membership rights and impairment of their constitutional rights as alleged above, the Intervenor's have a strong interest in assuring the NRA is represented by independent, conflict-free counsel who can investigate and litigate the NRA's derivative claims.

30. As alleged above and shown in the attached Exhibit 1, BAC's dual representation of the NRA and Wayne LaPierre renders BAC conflicted and precludes it from representing the NRA here.

31. No present party to this action will raise the conflicts of interest resulting from BAC's dual representation of the NRA and defendant LaPierre for the reasons alleged above.

32. Therefore, this Court should issue a declaratory judgment that BAC is conflicted from representing the NRA, it should enjoin BAC from the continued representation of the NRA, and it should require the NRA to engage independent counsel with no present or prior relationship to



BAC, the NRA or its Board of Directors, or any of the individual defendants.

33. Absent the requested declaratory and injunctive relief, the NRA and its members, including Intervenors, will be irreparably harmed and deprived of due process if this action proceeds without independent counsel for the NRA. The Intervenors bring this cause of action individually to protect their personal rights as NRA members to conflict-free representation of the NRA, and on behalf of all other NRA members whose corresponding personal rights to due process as NRA members would likewise be impaired.

**SECOND CROSS-CLAIM**

**Declaratory Judgment Against Indemnification**

**N-PCL § 722; CPLR § 3001**

**(On Behalf of the NRA Against All Defendants)**

34. Intervenors repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

35. [N-PCL § 722](#) authorizes corporations to indemnify their officers and directors under certain circumstances specified therein, but only where “. . . such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation. . .”

36. The Attorney General's complaint alleges that the individual defendants' actions were not in good faith, that they have looted the NRA's assets, and that they did so solely for their own personal benefit or the benefit of others against the best interests of the NRA.

37. Under [N-PCL § 722](#), the NRA may not indemnify individual defendants LaPierre, Frazer, Phillips and Powell against any judgments, fines, amounts paid in settlement and expenses in this action, including attorneys' fees.

38. Therefore, if the Attorney General's allegations are found to be true, the Court should enter a declaratory judgment and corresponding injunctive relief barring any indemnity by the NRA of any and all of the individual defendants determined to have so acted, and ordering the individual defendants to repay the NRA for all such fees and expenses previously advanced.

39. The Court should also award reasonable attorney's fees and expenses to Intervenors and their counsel pursuant to [N-PCL § 623\(e\)](#).

### **THIRD CROSS-CLAIM**

#### **Breach of Fiduciary Duty and Disgorgement of Profits**

#### **(On Behalf of the NRA Against Defendants LaPierre, Frazer, Phillips and Powell)**

40. Intervenors repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

41. The NRA and its membership, including Intervenors, placed their resources and trust in Defendants LaPierre, Frazer, Phillips and Powell as fiduciaries that were duty-bound to put the members' interests ahead of their own.

42. On information and belief, Defendants LaPierre, Frazer, Phillips, and Powell violated their fiduciary duties to the NRA by, *inter alia*, engaging in misappropriation, self-dealing, looting and/or committing waste of the NRA's corporate and charitable assets, participating in prohibited related party transactions, making or authorizing improper payments and benefits to third parties, and causing false and materially misleading filings to be made in New York State.

43. On information and belief, as a direct and proximate result of Defendants LaPierre, Frazer, Phillips, and Powell's breaches of their fiduciary obligations, the NRA has sustained and will continue to sustain significant damages, as alleged herein.

44. On information and belief, as a result of their misconduct, Defendants LaPierre, Frazer, Phillips, and Powell are liable to the NRA.

45. The NRA is entitled to the disgorgement of all profits, compensation, and/or benefits earned or obtained by Defendants LaPierre, Frazer, Phillips and Powell during the course of their breaches of fiduciary duty and other wrongful conduct.

46. Although the Attorney General's Eighteenth Cause of Action purports to assert derivative claims for the benefit of the NRA, her demand for its dissolution is contrary to the best interests of the NRA and its members, including Intervenors.

47. If the Attorney General's allegations are proven, Intervenors oppose distribution of any amounts recovered to any entity other than the NRA. All such recoveries should be paid only to the NRA to further continue its core mission and programs.

48. The Attorney General has not requested a determination of whether the consulting and vendor fees enumerated in the Complaint, including the legal fees referred to in paragraphs 457-472, were excessive and/or not validly authorized, nor sought recovery for the NRA of any such improper payments. Intervenors request the review of all such payments and the addition as defendants of any persons or other entities found to have charged and received any such excessive fees.

49. Intervenors further request that any and all such fees recovered be paid only to the NRA, less any attorney fees, costs and expenses that the Court may otherwise properly award, including an award of reasonable attorney's fees and expenses to Intervenors and their counsel pursuant to [N-PCL § 623\(e\)](#) and other applicable New York law.

50. Because Defendants' actions were willful, malicious, and deliberate, and demonstrated a conscious disregard for the NRA's interests, the NRA is also entitled to an award of punitive damages.

**FOURTH CROSS-CLAIM****Corporate Waste****(On Behalf of the NRA Against Defendants LaPierre, Frazer, Phillips and Powell)**

51. Intervenors repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

52. On information and belief, Defendants LaPierre, Frazer, Phillips, and Powell have looted and/or wasted the NRA's corporate and charitable assets, and they did so solely for their own personal benefit or the benefit of others against the best interests of the NRA.

53. On information and belief, as a direct and proximate result of Defendants LaPierre, Frazer, Phillips, and Powell's corporate waste, the NRA has sustained and will continue to sustain significant damages, as alleged herein.

54. On information and belief, as a result of their misconduct, Defendants LaPierre, Frazer, Phillips, and Powell are liable to the NRA.

55. Intervenors request that any and all such fees recovered be paid only to the NRA, less any attorney fees, costs and expenses that the Court may otherwise properly award, including an award of reasonable attorney's fees and expenses to Intervenors and their counsel pursuant to N-PCL § 623(e) and other applicable New York law.

56. Because Defendants' actions were willful, malicious, and deliberate, and demonstrated a conscious disregard for the NRA's interests, the NRA is also entitled to an award of punitive damages.

**COUNTERCLAIMS AGAINST THE ATTORNEY GENERAL****FIRST COUNTERCLAIM****Violation of Free Speech, Free Association, Due Process of Law, and Equal Protection****U.S. Const. 1<sup>st</sup> and 14<sup>th</sup> Amendments;****N.Y. Const. Art. I, §§ 6, 8, 9, 11; N-PCL § 623****(On Behalf of the NRA Against Attorney General of New York)**

57. Intervenor repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

58. The NRA was chartered in New York in 1871. For nearly 150 years it has been the leading national association of American citizens to promote the safe and responsible use of small arms for civilians and law enforcement. To that end the NRA has developed national training and certification programs used by many thousands of individuals, state and local associations, and law enforcement organizations that are recognized as primary standards for safe and effective use of firearms for recreation and defensive purposes. Further, many insurers rely on the NRA's safety certifications in providing insurance to individuals, state and local shooting facilities and law enforcement organizations.

59. But the first section of the NRA's Bylaws under "Purposes and Objectives" is to ". . . protect and defend the Constitution of the United States . . ." and especially the "inalienable right of the individual American guaranteed by such Constitution" to acquire, own and use firearms for self-preservation and defense. (NRA Bylaws Art. II, Sec. 1; 4th page of Exhibit 1 to Attorney General Complaint; Doc. No. 3). To this end, the NRA has long engaged in extensive public and legislative advocacy to promote its purposes and to vindicate the Constitutional rights of its members and all Americans. This advocacy is not only "political speech" but core political speech under the First Amendment to the U.S. Constitution.

60. The NRA is a private association of approximately 5.5 million members, all of whom

voluntarily associate by joining the NRA as Annual or Life members. All NRA members voluntarily contribute funds to support the NRA's advocacy, education and training programs, either by annual dues or by their payment for a Life membership. The NRA spends millions of dollars annually on printed and electronic media to advocate for the Second Amendment rights of its members and all other Americans, whether they are NRA members or not.

61. Because the NRA is almost always at the forefront of political debate about Second Amendment rights and issues, it is sometimes the target of political action by persons willing to subvert government power in order to stifle or completely shut down the NRA's ability to effectively advocate for the Second Amendment rights of Americans. That is the case here.

62. During her campaign for the office of New York Attorney General, media reports quoted Defendant Letitia James as saying that she would “take down the NRA”; that she saw “no distinction” between the NRA's political advocacy and its other activities; that “[t]he NRA is an organ of deadly propaganda masquerading as a charity for public good”; that she would use her “constitutional power as an attorney general to regulate charities” to attack the NRA’s “legitimacy”; that her “top issue” would be “going after the NRA because it is a criminal enterprise”; and that “We need to again take on the NRA, which holds itself out as a charitable organization. But in fact, they are not. They are nothing more than a criminal enterprise.”

63. Attorney General James' filing of this action and her demand for dissolution confirms the selective and targeted use of her authority consistent with her campaign promises in violation of the rights of the NRA and Intervenors to free speech, free association, due process of law, and equal protection of the laws under the [First](#) and [Fourteenth](#) Amendments to the U.S. Constitution and Article I, §§ [6](#), [8](#), [9](#), and [11](#) of the New York Constitution.

64. The Complaint wrongly imputes the numerous breaches of individual fiduciary duties

alleged against the individual defendants to the NRA as an entity, and seeks its dissolution based on these individual wrongful acts even though the Attorney General alleges these actions were solely for the individual defendants' personal benefit, and therefore necessarily adverse to the NRA and its members.

65. Thus, the Attorney General seeks to completely eliminate the NRA's ability to engage in its core political speech on behalf of Intervenors and all other NRA members. Her demand for the NRA's dissolution would totally destroy the rights of Intervenors and all other NRA members, as well as those Americans who may wish to join the Association in the future, to freely associate with others in the NRA and thereby to exercise their individual rights of free political speech and viewpoint advocacy.

66. Further, the Attorney General's complaint completely ignores the many safety, educational and training functions that the NRA continues to provide for members and non-members alike, and completely ignores the best interests of the NRA and its members, including Intervenors. Instead the Attorney General would throw the baby out with the bathwater by liquidating the NRA instead of simply removing the individual defendants from their positions and recovering any misused funds as would be normally done where individual corporate officers have abused their positions. Accordingly, her demand for dissolution is not narrowly tailored or closely drawn to achieve any otherwise legitimate objective of the State of New York.

67. Therefore the Attorney General's demand for dissolution under the facts alleged here, as applied here, is unconstitutional under the [First](#) and [Fourteenth](#) Amendments to the U.S. Constitution, and Article I, §§ [6](#), [8](#), [9](#) and [11](#) of the New York Constitution and should be enjoined.

68. As a direct and proximate result of Defendant Attorney General Letitia James'

constitutional violations, the NRA and its members, including Intervenors, have suffered the loss of their constitutional rights, entitling them to declaratory and injunctive relief. The Intervenors bring this cause of action individually to protect their personal constitutional rights as NRA members as alleged above, and also on behalf of all other NRA members whose corresponding personal rights as NRA members will likewise be impaired.

69. The Court should also award reasonable attorney's fees and expenses to Intervenors and their counsel pursuant to [N-PCL § 623](#).

### **SECOND COUNTERCLAIM**

#### **Injunctive Relief**

**U.S. Const. 1<sup>st</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments; N.Y.**

**Const. Art. I, § 6; N-PCL §§ 623, 1101, 1102, 1116**

**(On Behalf of the NRA Against Attorney General of New York)**

70. Intervenors repeat and re-allege each and every allegation set forth in the paragraphs above as though fully set forth herein.

71. The Attorney General's demand for dissolution is based on allegations of *individual* misconduct by the *individual* defendants that cannot be imputed to the NRA as a corporation under New York law. These allegations are of individuals acting entirely for their own or another's purposes, adversely to the NRA and its members, and their actions (if proven) totally abandoned the NRA's interests. Because the wrongful acts alleged by the Attorney General, if proven, were committed *against* the NRA and its members rather than on the NRA's behalf, New York law bars its dissolution.

72. The Attorney General has *not* alleged that the NRA is incapable of continuing its core missions and programs if the individual defendants' culpability is proven and they are removed from their NRA positions. In fact the NRA is quite capable of continuing its mission and programs if these allegations are proven and these individuals are removed from office.



73. Dissolution is an extreme remedy to be granted only when a corporation is unable to carry on its mission and business after the offending actions are corrected. Indeed N-PCL § 1116 expressly provides for the dismissal of a dissolution petition when it is established that the cause for dissolution either did not exist or no longer exists.

74. Neither of the two grounds specified by [N-PCL § 1101](#) for judicial dissolution of a non-profit corporation exist here: (1) the NRA did not procure its formation by fraud or concealment of a material fact, and (2) the NRA as a corporation – distinct from the misconduct of the individual defendants that the Attorney General alleges – has not exceeded its legal authority; has not violated any law whereby it has forfeited its charter; has not carried on its business in a persistently fraudulent or illegal manner; and has not abused its powers contrary to public policy.

75. The Attorney General alleges that she has authority to sue for dissolution based on a violation of “public policy.” However, there are no objective standards in [N-PCL Article 11](#) or other New York statutes and case law to define what “public policy” or “public interest” is, or what sort of violation will support judicial dissolution action under [§ 1101](#). Thus this section purports to grant the Attorney General and the courts absolute and unbridled discretion in its application, and in so doing violates the due process provisions of the [1<sup>st</sup>](#) and [14<sup>th</sup>](#) Amendments to the U.S. Constitution and [Article I § 6](#) of the New York Constitution.

76. Further, to the extent that any provision of [N-PCL Article 11](#) might be construed or applied to allow the Attorney General to obtain judicial dissolution of the NRA and to distribute its assets to any entities other than the NRA's members, this would

a. deprive the NRA, Intervenor and all other NRA members of due process of law by the taking of their private property for a public use without compensation;

b. violate the [8<sup>th</sup> Amendment](#) to the U.S. Constitution as an unreasonable and excessive fine or forfeiture imposed on the NRA and its members, including Intervenors, for the wrongful acts of the individual defendants and those acting with them; and

c. violate the Equal Protection Clause of the [14th Amendment](#) to the U.S. Constitution.

77. Therefore the Court should enjoin the Attorney General from seeking dissolution of the NRA.

78. Absent the requested injunctive relief, the NRA and its members, including Intervenors, will be irreparably harmed. The Intervenors bring this cause of action individually to protect their personal constitutional rights as NRA members as alleged above, and also on behalf of all other NRA members whose corresponding personal rights as NRA members will likewise be impaired.

79. The Court should also award reasonable attorney's fees and expenses to the Intervenors and their counsel pursuant to [N-PCL § 623\(e\)](#).

### **PRAYER FOR RELIEF**

WHEREFORE, Intervenors respectfully request this Court enter a judgment in favor of the NRA and against defendants LaPierre, Frazer, Phillips and Powell, any other individuals or entities that may be sued in this action, and the Attorney General of New York, for the following relief:

A. A determination that this action is a proper derivative action and that demand on the Board is excused as futile, and that the Intervenors have the right to bring the Causes of Action herein individually as well as on behalf of the NRA as an entity and all other NRA members.

B. A determination that the Intervenors have the right to bring the Causes of Action, as well as those Causes of Action brought by the Attorney General of New York, herein

individually as well as on behalf of the NRA as an entity and all other NRA members.

C. An immediate order that this action will be stayed until the Attorney General has given the notice specified by [N-PCL § 1104](#) to all NRA members and other persons or entities described in that section.

D. A declaratory judgment that Brewer Attorneys & Counselors (“BAC”) is conflicted and enjoined from continued representation of the NRA in this action; and that the NRA is required to engage independent counsel who have no present or prior relationship to BAC, the NRA or its Board of Directors, or any of the individual defendants.

E. A declaratory judgment that the Attorney General's demand for dissolution is not authorized by [N-PCL Article 11](#) and is unconstitutional under the [1<sup>st</sup>](#), [8<sup>th</sup>](#) and [14<sup>th</sup>](#) Amendments to the U.S. Constitution, and Article I, §§ [6](#), [8](#), [9](#) and [11](#) of the New York Constitution, together with dismissal of the Attorney General's claims for dissolution and/or an injunction barring the Attorney General from seeking the NRA's dissolution.

F. The removal from the NRA Board of Directors of any individual defendants determined to have breached their fiduciary duties or otherwise engaged in the misconduct alleged by the Attorney General, an order barring them from further membership or participation in the NRA, and the appointment of a temporary receiver to conduct a new election of Board members by the NRA membership pursuant to [N-PCL § 1111](#).

G. Disgorgement of all profits, compensation, and/or benefits earned or obtained by Defendants LaPierre, Frazer, Phillips and Powell during the course of their breaches of fiduciary duty and other wrongful conduct.

H. A judgment against any individual defendant determined to have engaged in the misconduct alleged by the Attorney General for damages and restitution of all NRA funds found

to have been misappropriated, misspent, recklessly spent, or otherwise improperly used for personal gain or the gain of others acting with such defendant, with interest as provided by law, and that any such judgment will include the amounts of any fines or penalties imposed on the NRA as the result of any such individual defendant's actions.

I. An order that any judgment entered in this action for damages or other monetary relief in favor of the NRA will include a provision that all sums recovered will be paid to the NRA for the use and benefit of its members, less the reasonable expenses of this litigation and reasonable attorney fees to Intervenors and their counsel.

J. On the Third and Fourth Cross-Claims, punitive damages in an amount to punish and deter Defendants LaPierre, Frazer, Phillips and Powell's willful and malicious conduct.

K. A declaratory judgment and corresponding injunctive relief barring each of the individual defendants LaPierre, Frazer, Phillips and Powell from seeking and/or receiving any indemnification or reimbursement from the NRA for any attorney fees and litigation expenses incurred in this action, and/or any penalties and other monetary assessments against them here.

L. An award of reasonable attorney's fees and expenses to Intervenors and their counsel pursuant to [N-PCL § 623\(e\)](#) and as may otherwise be allowed by New York law.

M. Such other and further relief as the Court deems just and proper.

Dated: June 17, 2021  
New York, New York

Respectfully submitted,

*/s/ Taylor Bartlett*

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(*pro hac vice* motion forthcoming)  
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(*pro hac vice* motion forthcoming)  
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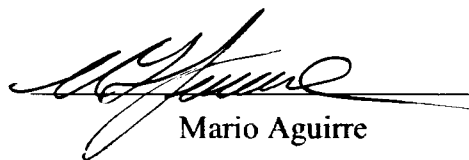
*Attorneys for Intervenors*  
*Francis Tait, Jr. and Mario Aguirre*

## VERIFICATION

STATE OF ALABAMA                    )  
  ) SS.:  
COUNTY OF Shelby                    )

MARIO AGUIRRE, being duly sworn, deposes and says:

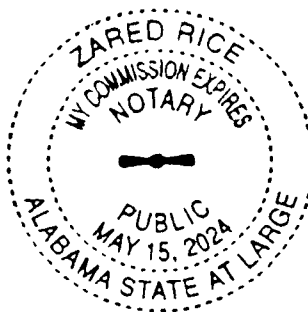
I am and was during the relevant time period a member of the National Rifle Association of America, Inc. ("NRA"). I am a proposed intervenor-plaintiff in this proceeding. I have read the foregoing PROPOSED VERIFIED COMPLAINT IN INTERVENTION and know the contents thereof, and the same is true to my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

  
Mario Aguirre

Subscribed and sworn to me on this  
12<sup>th</sup> day of January, 2021.

Zared Rice

My commission expires 5/15/24

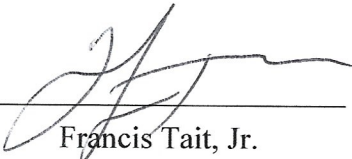


## VERIFICATION

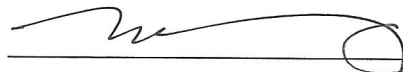
STATE OF PENNSYLVANIA       )  
  ) SS.:  
COUNTY OF CHESTER        )

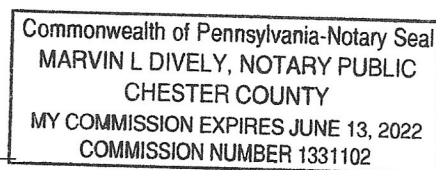
FRANCIS TAIT, JR., being duly sworn, deposes and says:

My name is Francis Tait, Jr. I am also known as Frank C. Tait. I am and was during the relevant time period a member of the National Rifle Association of America, Inc. ("NRA"). I am a proposed intervenor-plaintiff in this proceeding. I have read the foregoing PROPOSED VERIFIED COMPLAINT IN INTERVENTION and know the contents thereof, and the same is true to my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

  
\_\_\_\_\_  
Francis Tait, Jr.

Subscribed and sworn to me on this  
11<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_



My commission expires June 13, 2022