

# Exhibit 4



NYSCEF DOC. NO. 340

INDEX NO. 451625/2020

RECEIVED NYSCEF: 09/10/2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M\_\_\_\_\_  
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  
YORK,INDEX NO. 451625/2020MOTION DATE 06/21/2021

Plaintiff,

MOTION SEQ. NO. 011

- v -

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,  
INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN  
FRAZER, JOSHUA POWELL,DECISION + ORDER ON  
MOTIONDefendants.  
\_\_\_\_\_X

HON. JOEL COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 243, 244, 245, 246,  
247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 263, 290, 291, 292, 293, 294,  
295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 322, 323, 324, 334, 335

were read on this motion to

INTERVENE

Upon the foregoing documents, and for the reasons stated on the record following oral  
argument on September 9, 2021, it is**ORDERED** that the motion to intervene is DENIED; and it is further**ORDERED** that the parties upload a transcript of the September 9, 2021 proceedings to  
NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

9/10/2021  
DATE

CHECK ONE:

☐

CASE DISPOSED

☒

NON-FINAL DISPOSITION

☐

GRANTED

☒

DENIED

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

20210910150224MCOHEN826A5951A694D8283D126F4801D2B67

JOEL COHEN, J.S.C.



1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: TRIAL TERM PART 3  
3 - - - - - X

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

5 Plaintiff,

6 - against -

INDEX NO.  
451625/20

7 THE NATIONAL RIFLE ASSOCIATION OF  
8 AMERICA, INC., WAYNE LAPIERRE, WILSON  
9 PHILIPS, JOHN FRAZER and JOSHUA POWELL,

9 Defendants.

10 - - - - - X

11 60 Centre Street  
12 New York, New York  
13 September 9, 2021

14 **VIA MICROSOFT TEAMS**

15 BEFORE:

16 HONORABLE JOEL M. COHEN,  
17 Justice

18 APPEARANCES:

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FRANCOIS BLAUDEAU, ESQ.

GEORGE DOUGLAS, ESQ.

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Bonnie Piccirillo  
Official Court Reporter

bp

## Proceedings

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THE COURT: Why don't we start with entering appearances. Let's begin with the parties, counsel for the plaintiff.

6

7

MS. CONNELL: Good afternoon, your Honor. Can you hear me?

8

THE COURT: Yes.

9

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11

12

MS. CONNELL: This is Monica Connell of the New York State Attorney General's Office for The People of the State of New York by Letitia James, Attorney General of the State of New York.

13

14

15

The motion today is going to be argued by my colleague, Stephen Thompson, and Emily Stern of my office is also here.

16

THE COURT: Good afternoon.

17

For the defendants, beginning with the NRA.

18

19

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21

22

MR. GEISLER: Good afternoon, your Honor. Mordecai Geisler, Brewer, Attorneys & Counselors, on behalf of The National Rifle Association of America. I believe my colleague, Sarah Rogers, is on the line as well and I will be arguing the motion for NRA today.

23

THE COURT: Good afternoon. For Mr. LaPierre.

24

MR. CORRELL: Kent Correll for Mr. LaPierre.

25

THE COURT: Good afternoon. For Mr. Phillips.

bp

## Proceedings

1 MR. FARBER: Seth Farber for Mr. Phillips.

2 THE COURT: Mr. Frazer.

3 MR. FLEMING: Good afternoon, your Honor. William  
4 Fleming for Mr. Frazer.

5 THE COURT: Good afternoon. And Mr. Powell.

6 MS. BLOCK: Good afternoon, your Honor. Samantha  
7 Block for Mr. Powell.

8 THE COURT: And, finally, for the Proposed  
9 Intervenors.

10 MR. BLAUDEAU: Yes, Justice Cohen. Francois  
11 Blaudeau.

12 THE COURT: You're going to have to spell that  
13 because your name is not on the screen there. So for the  
14 court reporter, please.

15 MR. BLAUDEAU: Yes, your Honor. Francois,  
16 F-R-A-N-C-O-I-S. Last name is Blaudeau. B, like in boy,  
17 L-A-U, D like in David, E-A-U. Thank you.

18 MR. DOUGLAS: And then George Douglas, one S in  
19 Douglas.

20 MR. BARTLETT: This is Taylor Bartlett. I don't  
21 anticipate speaking, but I'm also here.

22 THE COURT: Mr. Geisler, if you want to mute  
23 yourself, we're hearing the paper rustling.

24 MR. GEISLER: Yes, sir.

25 THE COURT: I've read all the papers and which were

## Proceedings

1 extremely helpful, so I'm hoping we can proceed efficiently.  
2 You don't have to read everything that you've written, but  
3 hit the highlights.

4 I'd like to have the arguments go for about an hour  
5 or less, so roughly 3:45, after which I'll take a break and  
6 then if possible, we'll see if I can issue an opinion from  
7 the bench. If not, obviously, I may have some other  
8 questions. Let's try to keep to an hour, and I'll begin  
9 with the Intervenor's counsel.

10 MR. BLAUDEAU: Thank you, Judge. This is Francois.  
11 I'm going to give a brief introductory.

12 So, Judge, we can kind of review of why we're here.  
13 Let me start by saying that one of the fundamental issues  
14 here has got to do with due process and adequate  
15 representation of the rank and filed membership of the NRA.

16 As the Court's aware --

17 (Technical interference)

18 MR. BLAUDEAU: Am I good to start to keep talking?

19 THE COURT: Yes.

20 MR. BLAUDEAU: In its purest form, what this motion  
21 to intervene is about is the rank and file membership of the  
22 NRA and whether or not they're being adequately represented  
23 by the current NRA defendant and whether or not they're  
24 being adequately represented by the State of New York  
25 Attorney General's Office.

## Proceedings

1                   And in looking at this very important issue of  
2                   adequate representation, what's clear here is that the  
3                   circumstances matter; and I think that the Court has had the  
4                   opportunity to read the pleadings, and I think what's  
5                   important to focus on here is what are we really talking  
6                   about? Because there are different issues for which maybe  
7                   such a motion of intervention might not be necessary; but in  
8                   this case because of the allegations that had been brought  
9                   forth by the New York AG's Office and understanding that  
10                  Mr. LaPierre and the other named defendants and the NRA as  
11                  far as the Board action are presumed innocent still at this  
12                  stage, the very accusations that have been made of a  
13                  significant fiduciary violation are such that any  
14                  common-sense approach would make you believe that you can't  
15                  leave the fox in the henhouse when the fox is killing the  
16                  chickens. You just can't do it.

17                  And so the issue here is the NRA wants us to  
18                  believe that they truly represent the rank and file  
19                  membership and the organization as a whole that has stood  
20                  forth for 149 years, and the reality is that no one with any  
21                  common sense can look at that and say that until they're  
22                  cleared of this fiduciary issues, there's no way that they  
23                  should be allowed to speak for the entirety of an  
24                  organization that they're accused of fiduciary  
25                  irresponsibility with.

bp



## Proceedings

1                   So the Intervenors had filed this motion. We think  
2                   the motion is timely. There have been some suggestions in  
3                   the papers that we should have filed the case sooner, the  
4                   motion to intervene sooner.

5                   As the Court is aware of the NRA, they tried the  
6                   Hail Mary pass by filing a bankruptcy petition in Texas.  
7                   Our understanding of that was that all the motions to come  
8                   in were stayed. We were in contact with the New York AG's  
9                   office in the fall of 2020. We made it apparent that we had  
10                  some serious concerns about what was going on with the  
11                  NRA --

12                  (Technical interference)

13                  THE COURT: We missed. Go back about twenty words.

14                  MR. BLAUDEAU: Okay. We were talking, Judge, about  
15                  the timeliness of our motion to intervene. There was the  
16                  suggestion in the papers by the NRA that somehow we should  
17                  have filed in the earlier part of 2021, and we were prepared  
18                  to file right around that time that the NRA filed their  
19                  petition for a bankruptcy in Texas and our understanding of  
20                  the bankruptcy laws were that any additional filings were  
21                  stayed at that point.

22                  So we believe that our motion to intervene is  
23                  timely. We have been in touch with the Court via letter.  
24                  We've been in touch with the New York State AG's Office like  
25                  I said in the fall of 2020.

bp

## Proceedings

1                   THE COURT: Well, let me ask you this, sir. You  
2                   made the point earlier about the fox in the henhouse. It's  
3                   certainly not unusual that in a law enforcement action  
4                   against an entity that allegations are made against the  
5                   management. Have you found any cases where in anything  
6                   remotely like that where individual members -- two to be  
7                   specific -- were able to take the mantel and sort of enter  
8                   the lawsuit as a party? Because that's also unusual, right?

9                   The government has a lawsuit against the entity,  
10                  and it's like two shareholders coming in saying, Well, we  
11                  don't really like the company's lawyers very much. We think  
12                  we should do it. First of all, where does that end because  
13                  if your two clients can intervene, what would I say to the  
14                  next hundred people who come in and say, Well, we don't  
15                  agree with those two guys? We have a different point of  
16                  view. Wouldn't that mean I'd have to let them intervene  
17                  also and it would just keep going on and on?

18                 MR. DOUGLAS: Your Honor, I can speak to that, but  
19                 I don't know what your normal custom is. Do you care if  
20                 Mr. Blaudeau and I go back and forth a little bit?

21                 THE COURT: It's fine with me, as long as you  
22                 introduce yourself when you do it. You're a little bit off  
23                 the screen, but we can be informal about it.

24                 MR. DOUGLAS: Thank you. George Douglas for the  
25                 Proposed Intervenors.

## Proceedings

1                   Your Honor, the answer to that is that in this  
2           particular case, the allegation is not simply a bare  
3           allegation; but it is supported by evidence which we've  
4           presented to the Court by virtue of the exhibits to our  
5           memorandum and to our proposed complaint.

6                   We're not seeking to take the mantel, so to speak  
7           -- to use the Court's term -- at this particular juncture.  
8           What we are seeking to do is to intervene where we have  
9           alleged and strongly believe that we can prove that neither  
10          the representation by the Attorney General nor the  
11          representation by the NRA is adequate to protect the  
12          interests of the membership.

13                   I sent the Court back in November -- before we were  
14          able to find a New York attorney to associate with -- a  
15          letter, which your Honor included in the record. That  
16          letter is also part of the exhibits that we have submitted  
17          under Mr. Bartlett's affirmation. That letter details the  
18          numerous conflicts that the Brewer firm had at the time  
19          representing not only the NRA, but Mr. LaPierre  
20          individually.

21                   It was only after that letter was sent to the Court  
22          that Mr. LaPierre or the Brewer firm withdrew from  
23          representing Mr. LaPierre, and you can only wonder had that  
24          letter not been sent, whether that would happen.

25                   But the point of the due-process argument is that

bp

## Proceedings

1       there are numerous cases, which we've cited and tried to hit  
2       the main ones. We could have cited a couple of dozen more.  
3       Let's say that representation by a conflicted counsel of the  
4       group of plaintiffs are members in a corporation is  
5       inadequate as a matter of law.

6               So we're not at this point trying to run the show.  
7       To the contrary, as we've said in our proposed answer. We  
8       are fully on the side of the New York Attorney General with  
9       respect to the claims of malfeasance and breach of  
10       fiduciary.

11              If those claims are proven and we believe that they  
12       can, then, certainly, the individual defendants -- well,  
13       only Mr. LaPierre and Mr. Frazer are still employed or serve  
14       the NRA, but those two defendants should be removed.

15              Not only that, most of the NRA Board of Directors,  
16       which the Attorney General repeatedly refers to as a  
17       rubber-stamp board, and which we believe will be -- will  
18       also be able to be proved. Most of that Board, if not all,  
19       but a handful need to be removed. We're not there yet.

20              My argument today and our argument in our papers is  
21       that the only issues now before the Court are whether we  
22       have alleged a sufficient basis for intervention as of right  
23       and permissive.

24              I apologize if that sounds like a long answer to  
25       your question, but the point of that is that a fair reading

## Proceedings

1 of our pleadings and papers would be that we are not  
2 presently seeking to have control over the NRA's --

3 THE COURT: Right, I meant that you would be  
4 intervening on behalf of two members, and then tomorrow  
5 somebody else could be representing two other members on a  
6 with a slightly different take. Maybe this is overly  
7 simplistic, but it sounded to me from the papers and from  
8 what you just said, that your clients are aligned in  
9 interest with Attorney General with respect to the claims  
10 against the individuals and that you have the same general  
11 view of the facts and the result.

12 And I think their papers suggest that you have --  
13 you're aligned in interest with the NRA with respect to the  
14 dissolution argument.

15 So doesn't that mean that your clients' interests  
16 are collectively already represented?

17 MR. DOUGLAS: No, your Honor, and, respectfully, we  
18 are not fully aligned with either or any of the existing  
19 parties.

20 Our interests are aligned with the Attorney General  
21 to the extent that she seeks damages, restitution from the  
22 individual defendants and their removal from their  
23 positions.

24 We are adamantly opposed to the Attorney General  
25 with respect to her demand that the NRA be dissolved.

## Proceedings

1 THE COURT: No, I understand that. I meant in the  
2 aggregate, you have a party who is pursuing the position  
3 that you would like to pursue. It's a different party as to  
4 each claim; but, collectively, your client's interests are  
5 represented by somebody. They are just not the same  
6 somebody for each claim.

7 MR. DOUGLAS: I really don't mean to be the stick  
8 in the mud, but not exactly. Because the Attorney General's  
9 claims against the individuals while alleging their  
10 fiduciary breaches are aligned with ours. There are also  
11 other third-party defendants that have benefitted from the  
12 alleged fiduciary breaches of the individual defendants.

13 The Attorney General has made no claim or effort to  
14 pursue restitution or recovery from those individuals.

15 In particular, and, again, the actual substantive  
16 issue isn't for the Court. But, in particular, we have  
17 provided I think substantial evidence that the NRA's  
18 billings from the Brewer firm are simply over the top and  
19 could be found to be excessive. The Attorney General's  
20 complaint touches on that issue, but doesn't make any claim  
21 against the Brewer firm for that.

22 As a result of those claims and the Brewer firm's  
23 previous representation of both the NRA as an entity as well  
24 as LaPierre, the executive vice president of the NRA, the AG  
25 alleges -- you're holding up your hands. I'm sorry, are you



## Proceedings

1 saying that's enough?

2 THE COURT: No, I was just listening.

3 MR. DOUGLAS: Okay, I'm sorry. It looked like you  
4 were motioning.

5 As to the conflicts of the Brewer firm, the case  
6 simply cannot proceed until and unless the Brewer firm is  
7 disqualified and the NRA gets independent counsel. Because  
8 for one thing, independent counsel on behalf of the NRA  
9 might very well choose to assert defenses and against the  
10 individual defenses that the Brewer firm has not yet  
11 asserted in any of their pleadings. Specifically, New  
12 York's adverse-interest exception.

13 The very first thing I think that an independent  
14 law firm representing the NRA as an entity would have done  
15 when on receipt of this complaint is throw the individual  
16 defendants under the bus, in a sense, by saying you need to  
17 get your own lawyers. These claims against you are serious.  
18 If proven, the NRA has substantial monetary and equitable  
19 claims against you.

20 And there's a substantial line of cases, the KPMG  
21 case being one of the most cited that says where the  
22 individual defendants have breached their fiduciary duties  
23 solely for their own interests and adversely to the  
24 interests of the corporation. What the AG's complaint  
25 repeatedly alleges is that Mr. LaPierre and corporation for

## Proceedings

1 his own benefit, in that case you would include those  
2 allegations; but the Brewer firm is conflicted in doing that  
3 because to do so, they would have been asserting that claim  
4 against their own client.

5 THE COURT: Look, I understand -- I think I  
6 understand your points and you make a number of compelling  
7 arguments. The question that it comes down to is about  
8 intervention and when can two individual members out of  
9 5 million become parties in this case as opposed to --  
10 again, the NRA is the client. So if there's a problem with  
11 their counsel, the NRA is typically -- the client is the one  
12 who makes that point.

13 Now, you're familiar, I know from the briefs, with  
14 the provision in New York law which is true in other states  
15 as well in other areas, that in order for a shareholder or a  
16 member of a not-for-profit corporation in New York to bring  
17 a derivative claim, the statute says you can do that, but  
18 you need to have a lot of members, specifically five  
19 percent. And you, though, are bringing individual --  
20 bringing derivative claims on behalf of far less than five  
21 percent.

22 So how does that square with straightforward New  
23 York law? And there's a reason for those provisions  
24 because, I mean, you're qualified lawyers making good  
25 arguments; but if I were to say that two members could

## Proceedings

1 intervene and be on the docket and file papers, it would be  
2 hard to figure out how I would say no to any number of  
3 others. Isn't it that why the five-percent rule exists?

4 MR. DOUGLAS: Your Honor, two -- actually maybe  
5 three.

6 First off, you could certify the NRA membership as  
7 a class represented by Mr. Tait. He's one of the  
8 intervenors and the other intervenor is Mario Aquirre. So  
9 you could certify the clients to solve that very issue, but  
10 with respect to why we would be able --

11 THE COURT: Well, hang on. A derivative claim is  
12 not a class action. A derivative claim is some number of  
13 shareholders or members can sue on behalf of the company.

14 MR. DOUGLAS: Fully understand that and fully  
15 agree. And, even if -- well, we think that our derivative  
16 claims that are denominated as such can properly be asserted  
17 because the AG has already filed this action and initiated  
18 it as a derivative action, and we are intervening to assure  
19 that all other derivative claims are properly brought and  
20 litigated.

21 The reason the AG has conflicts with respect to  
22 those is that the AG is not really acting as the  
23 representative or in the best interests of either the NRA as  
24 an entity or its membership.

25 THE COURT: Well, the AG will speak for themselves,

bp

## Proceedings

1 but that is not as my understanding of what the AG's role  
2 is. It is to represent the public.

3 MR. DOUGLAS: Okay, but with respect to that, then  
4 the AG is still not an adequate representative for the  
5 membership, which is what Mr. Blaudeau was saying to begin  
6 with; is right now, there is no one in the case who is  
7 representing the interests of the NRA as an entity -- who is  
8 adequately representing the interests of the NRA as an  
9 entity or the interests of its membership whose donations  
10 and annual dues have built the NRA and made it as Justice --  
11 or as Judge Hale in the bankruptcy case said.

12 I think it's beyond question that the NRA is  
13 financially viable and can be rehabilitated. So it is not  
14 enough for the AG to say these people have done these bad  
15 things and, therefore, we're going to shut the NRA down.

16 You could perhaps put it in a different perspective  
17 by assuming -- let's just assume for a moment that this  
18 wasn't the NRA; that this was AARP, the American Red Cross  
19 and that its top executives had been caught with their hands  
20 in the cookie jar for a long time and the Board wouldn't do  
21 anything about it. And I can't imagine that anybody would  
22 say, Well, we ought to just liquidate the Association even  
23 though it has the money and assets to continue its mission  
24 once the alleged wrongdoers, assuming that's proven, are  
25 removed from office.

## Proceedings

1                   So, the AG is not -- if the fair reading from her  
2                   pleadings is the AG is not acting in the best interest of  
3                   the NRA. And, ultimately, I understand you say that her  
4                   interest is representing that of the public; I believe that  
5                   she is also required to consider the best interest of the  
6                   corporation as an entity and, ultimately, the test is  
7                   whether the corporation can be rehabilitated --

8                   THE COURT: Hang on one second. We're getting -- I  
9                   think we're getting feedback from outside. We're getting  
10                  some sirens outside our windows. We're right next door to  
11                  the Criminal Court so it gets a little loud sometimes.

12                  MR. DOUGLAS: So what the AG has to be able to show  
13                  at the end of the day and actually cited this case in her  
14                  response, the Brighton Fire Department, the law is and it's  
15                  really, I think, black letter beyond dispute. At the end of  
16                  the day, the AG has to show that the corporation, that is  
17                  the NRA as an entity can no longer carry out the purposes  
18                  for which it's formed. And right now, there is no party in  
19                  the case that would adequately represent the members'  
20                  interest in showing that.

21                  THE COURT: Well, that's what I want to check on a  
22                  bit here. Because the adversary process is where you -- you  
23                  know, the AG will make whatever argument they're going to  
24                  make. The NRA is vigorously opposing dissolution, and it's  
25                  the job of the Court to balance various things that the

## Proceedings

1 statute specifically says. The paramount one is the public  
2 interest, which I agree with you would include the interest  
3 of members.

4 The question is we have the players here and I take  
5 it -- I understand your point, that you don't view the NRA  
6 as being in a position to -- at least as to some issues  
7 represent what at least your two clients think are the  
8 members' interest. Again, bearing in mind that you're two  
9 of 5 million and I have no way of knowing whether your  
10 clients represent what many or most members think; but why  
11 aren't those interests exactly what you said? If that's a  
12 decision that the Court has to make at some point, exactly  
13 the one you just described which is based on the facts as  
14 proven, is this a situation where dissolution is an  
15 appropriate remedy -- you have the AG saying yes, you have  
16 NRA saying no -- and I'm still left with the question, which  
17 is the fundamental one which seems kind of procedural and  
18 picky. But how do I let two members become parties to this  
19 case in that situation? Because in other government  
20 investigations, you can make all of the same points you're  
21 making and you make them very well.

22 The point is that your clients are not parties.  
23 They do not, as far as I understand it, have a property  
24 right in any of the NRA's assets. Once they are donated,  
25 that's the law pretty clearly. You have very good arguments



## Proceedings

1 to make. I just am not sure how you have standing to make  
2 them.

3 MR. DOUGLAS: Well, first of all, your Honor, it is  
4 not necessary that they have tangible property rights. They  
5 have intangible property rights in the continuation of the  
6 NRA for their benefit because they're the people who for  
7 whom's benefits it exists and should continue to exist.

8 THE COURT: That would be true in every case. That  
9 would mean that every member of every non-for-profit could  
10 always be a party to any case against the nonprofit.

11 MR. DOUGLAS: Well, there is one other answer to  
12 that and I should have said this earlier. Suppose that you  
13 were to allow us to intervene on the grounds that we have  
14 put forth, and suppose that you accept our argument that  
15 Section 1104 of the N-PCL requires notice to all the rest of  
16 the NRA members and then further suppose that you get ten  
17 other applications to intervene; those people will not be  
18 able to intervene and could properly be denied to intervene.  
19 And I think this is the direct answer to your question. I  
20 apologize for not thinking of it earlier.

21 The Court's answer to those intervention petitions  
22 is your interests are now being adequately represented by  
23 Mr. Tait and Mr. Aguirre.

24 THE COURT: Really? What if they say, "I have a  
25 completely different view of the right answer to this

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1 question that Mr. Tait does?"

2 MR. DOUGLAS: Well, I suppose they could say that,  
3 but I think we have made the best arguments that there are,  
4 and I think that the Court in that instance could properly  
5 deny it. But, in any event --

6 THE COURT: But that's the problem, though, isn't  
7 it, sir?

8 Even if it was a class action, I don't know how you  
9 can demonstrate typicality because I imagine there's a wide  
10 range of views if you were to poll all the members. I have  
11 no idea, but nor do I have any reason necessarily to believe  
12 that your two clients are representative of the membership  
13 as a whole or of more than X-percent of the membership.

14 Again, I have great respect for the arguments  
15 you've made. They're well-stated. They're well-put, and  
16 it's just a question of whether under New York law your two  
17 clients have standing to be parties in this case just as two  
18 members, and I understand the point. There's a real tension  
19 that I'm going now turn to your opponents to talk through  
20 about that; but as a general matter and in government  
21 enforcement actions -- which this essentially is -- the  
22 shareholders and members don't get to be parties.

23 They may have a tremendous interest in the company  
24 that they are associated with continuing in existence, but  
25 that doesn't mean that they can intervene and be parties in

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1 the case.

2 MR. BLAUDEAU: Judge, let me direct the Court in a  
3 slightly different direction with respect to what you spent  
4 the last few minutes talking about.

5 I think circumstances make sometimes for unusual  
6 decisions under a judge's discretion and here, I think you  
7 have to flip this around a little bit and say what are the  
8 consequences of not allowing an intervention to occur?

9 And I think if you look at this and the thought  
10 process of one, proper notice has not been given to the  
11 membership of all of these issues and we certainly feel that  
12 that's important that that be given. And so as a corollary  
13 to what you said, if proper notice was given to the  
14 membership and they understood all of the issues that were  
15 at hand; then, yeah, there may be some different thoughts,  
16 but there probably would be more than five percent of the  
17 membership that would want to take some kind of action that  
18 makes sense.

19 Here, the other issue is if you look at what the  
20 federal bankruptcy judge found when he looked at the  
21 functioning -- and this is a very important point. I think  
22 that this is a point that we feel you ought to really think  
23 about in your decision-making process. That judge who  
24 looked at all of the information available to him and who,  
25 by the way, was the Chief Judge of the Bankruptcy Court and

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1 a very experienced jurist came away with the conclusion that  
2 he wasn't really sure what was really going on with the  
3 leadership at the NRA, whether or not --

4 (Technical interference)

5 THE COURT: I'm sorry, you broke up for the last  
6 ten seconds.

7 MR. BLAUDEAU: The federal bankruptcy judge in  
8 Texas wrote that he had some concerns about the leadership  
9 of the NRA and about how they were functioning and whether  
10 or not the decision to file bankruptcy had been even  
11 approved by the Board and that he had some serious concerns  
12 about what was going on in that leadership.

13 I think that that is the issue before the Court  
14 now, is you're being asked to turn away reasonable, logical  
15 intervention that simply says that the current folks that  
16 are defendants in a case where they have been accused of  
17 significant financial malfeasance, breach of fiduciary  
18 responsibilities to their organization and to the members  
19 should be allowed to continue to run the company and run the  
20 company in a point and time of the greatest existential  
21 issue to their existence, which is this desire to dissolve  
22 the NRA by the New York AG's office.

23 We believe in our intervention that a receivership  
24 and a trustee should be appointed to reform the NRA Board,  
25 to give its leadership a new breath away from the

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1 malfeasance of Mr. LaPierre and all of the ongoing issues  
2 with manipulation of Board members and all these things that  
3 the Court's aware of or accusations that the Court is aware  
4 of. In any sane situation, they would be asked to step  
5 aside at least until they cleared their names.

6 Here, again, they're being given the green light to  
7 represent the NRA's interests when they're trying to also  
8 represent their own interests, and it's a fallacy being  
9 based on what the Court has in front of it. You would have  
10 to put blinders on and a sack over your head to believe that  
11 the Board that currently is run by Wayne LaPierre at the NRA  
12 is making decisions that aren't influenced by Mr. LaPierre  
13 who's a defendant personally and individually in this  
14 lawsuit.

15 I mean, I think that I understand the Court's  
16 desire to say, Wait a minute, you're coming here with two  
17 people and you don't have five percent; how am I going to  
18 deal with these two folks? How am I going to let other two  
19 folks in, and I understand that and I think you have strong  
20 points about that.

21 But what happens if you don't, if you don't allow  
22 the intervention, if you don't allow someone to speak up for  
23 the NRA that's not polluted by this financial chicanery?

24 Are we going to allow a 150-year organization run  
25 with 5 million members be completely highjacked under the

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1       auspices of the New York courts? I just don't think so, and  
2       I understand --

3               THE COURT: Well, let me pivot from that because I  
4       want you to reserve a little bit of time for rebuttal, and  
5       let me pivot to the defense.

6               Well, I'm not sure who should go first here. Let  
7       me since the last target was really more the NRA, why don't  
8       I let Mr. Geisler go first in responding. You have to share  
9       your time with your -- I don't know whether the other  
10      defendants are going to separately speak, but, certainly,  
11      the Attorney General's Office is going to want some time.

12              MR. GEISLER: Thank you, your Honor.

13              I think you've already touched on a number of the  
14      main issues here. I think your Honor was exactly spot on.  
15      But the entire point of the five-percent threshold under  
16      N-PCL 623(a) is to avoid precisely the kind of chaos that  
17      your Honor was asking about and, frankly, did not really  
18      receive an answer to, which is if you let in one intervenor,  
19      why not ten, why not a hundred, why not a thousand?

20              In their presentation and in their papers the  
21      Proposed Intervenors did not address the five-percent  
22      threshold and yet seemingly conceded that it's applicable;  
23      but for -- but for their own stated reasons that it somehow  
24      should not apply it.

25              THE COURT: Why don't we get right to Mr.



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1       Blaudeau's in factful point, right? If you take the facts  
2       as they allege, that there's nobody with sort of an  
3       independent non-conflicted bent who is out there  
4       representing the entity as opposed to the individual  
5       interests of the controlling management.

6               MR. GEISLER: Well, my response would be that's  
7       just not the case; and in their papers and in their  
8       presentation, they completely ignore the fact that both  
9       Mr. LaPierre and Mr. Frazer have recuse themselves in this  
10      action. The Board of Directors has appointed a Special  
11      Litigation Committee, independent committee that is making  
12      the decisions with respect to this action.

13             The Board of Directors, the allegations made by the  
14      Proposed Intervenors in their papers are completely  
15      conclusory with respect to the Board. They made no  
16      allegations and, frankly, neither has the New York Attorney  
17      General, that any specific or identified member of the Board  
18      has been implicated in any wrongdoing, much less that the  
19      Intervenors could point to a majority of the Board.

20             On this point, I would also add -- and I don't  
21      believe this was touched on either -- is that the  
22      Intervenors had failed to comply with 623(c), which requires  
23      them to make an appeal to the Board of Directors of the  
24      Association and seeking to commence the action which they  
25      now seek to commence through the Board.

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1           There's a similar provision in the by-laws of the  
2       NRA in Article IX that requires -- that has a procedure for  
3       them to appeal to the procedures of the NRA to remove  
4       officers and directors. They have not made any allegation  
5       that they sought to do that. Instead, they're trying to do  
6       an end around through intervention.

7           So they're just wrong when they say that there's  
8       no independent oversight. There is. It's the Board. It is  
9       the Special Litigation Committee, and I won't go through the  
10      legal arguments that we made in our papers, but the Special  
11      Litigation Committee is afforded deference and afforded  
12      under the doctrine the business judgment rule is afforded  
13      the right to make the decisions as an independent committee,  
14      to make the decisions with respect to this litigation, what  
15      defenses to assert, which claims to bring and which attorney  
16      should represent the Association.

17           THE COURT: Well, let me just ask you  
18      hypothetically. I know you don't agree with the facts, but  
19      let's assume they're right and that the Board is corrupted  
20      and is not really -- everyone is conflicted, management and  
21      the Board are conflicted. Who represents -- what should the  
22      members do in a situation like that where that's their view?  
23      Is there no outlet they have to express their views or to  
24      sort of cut through the morass?

25           MR. GEISLER: Well, I mean, you're right, your

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1 Honor, I don't accept the premise and under the law the  
2 Special Litigation Committee is afforded the deference. But  
3 in your hypothetical, one would think that if such  
4 allegations were true that a proposed intervenor could  
5 garnish support of five percent of whatever class he or she  
6 represents; but more to the point, there are also internal  
7 procedures as I mentioned within the Association under the  
8 Bylaws where they can make appeals to remove officers and  
9 directors. They have made no statement or allegation that  
10 they have even attempted to do so. They have made no  
11 statement or allegation that they have attempted to go to  
12 the Board.

13 Instead, what they say, they say that it is futile;  
14 and they say in simply conclusory fashion that it would be  
15 futile to go to the Board because they're controlled or  
16 they're dominated, but they give no specific allegations.  
17 They identify no members of the Board to whom they've  
18 appealed and were denied.

19 So, there are guardrails that are outlets for any  
20 individual member within the Association, within the  
21 Association to make themselves heard.

22 And I would note, I believe it's Mr. Tait, has  
23 actually run for the Board. He did not prevail on his last  
24 election, and I believe he stated his intention is to run  
25 again. So he's very familiar with the procedures that are

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1 available to members within the Association.

2 THE COURT: Do you think the members should have  
3 any way of conveying their views on how this case should be  
4 run?

5 MR. GEISLER: Well, the members have the right to  
6 vote. The members have the right to attend meetings. The  
7 members have the right, as I said, to petition internally in  
8 the Association.

9 If your Honor's question is is there a right to  
10 intervene? Again, short of five percent -- meeting the  
11 five-percent threshold which is really the only practical  
12 way that this could ever be conducted because, otherwise,  
13 you would have individual members or groups of members of  
14 whatever number you want to pick, each with their own  
15 agenda, each with their own opinion, each with their own  
16 viewpoint -- and I think your Honor touched on this --  
17 viewpoint as to how things should go.

18 Counsel stated earlier that, well, you know, it's  
19 an easy solution if we're allowed to intervene, then we  
20 represent the other 5 million members; and, therefore, there  
21 won't be a problem with additional moving parties. Well,  
22 that's obviously not the case. You're going to have  
23 different people with different ideas and different  
24 opinions.

25 That's why really, as a matter of law, the

bp

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1 Association speaks on behalf of its members; and, obviously,  
2 the Association is contesting dissolution as your Honor  
3 mentioned with all of its ability. And so to the extent  
4 that the stated intention of the moving parties is to avoid  
5 dissolution, that's, obviously, something that they share  
6 with the Association and that, undoubtedly, all the members  
7 share.

8 THE COURT: Okay, I think I have your arguments  
9 pretty well from your papers and from what you've just  
10 said.

11 Let me see if any of the other defendants have  
12 anything they want to add before I turn to the AG because I  
13 do want to leave some time for the Intervenors to respond.

14 Any of the other defendants want to add anything  
15 before I turn it over to the Attorney General's Office?

16 MR. CORRELL: This is Kent Correll for Wayne  
17 LaPierre. I have nothing to add.

18 THE COURT: Thank you, sir.

19 MR. FLEMING: Your Honor, I'll spare the Court of  
20 kind of a rehash of what I think has already been touched  
21 on, so I'll stand down. Thanks.

22 THE COURT: Okay. Mr. Geisler has handled it well.  
23 Okay, for the Attorney General.

24 MR. THOMPSON: Good afternoon, your Honor. Stephen  
25 Thompson on behalf of New York Attorney General. I will

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1 endeavor to be brief.

2 For all of the reasons that Mr. Geisler has stated  
3 regarding the five-percent membership requirement for  
4 derivative standing under N-PCL 623, we believe that that is  
5 dispositive of whether or not the Intervenor here can  
6 represent the NRA derivatively with respect to any  
7 counterclaims that they propose to bring against the  
8 Attorney General.

9 And, with respect to the Intervenor --

10 THE COURT: Well, does the five-percent rule apply  
11 to claims they can bring against the Attorney General, or  
12 isn't that just for derivative claims? Is that filed as a  
13 derivative claim? I guess it is. So it's a derivative  
14 claim on behalf of the NRA against the Attorney General.

15 MR. THOMPSON: It is, your Honor. Although, they  
16 do couch it not only as a derivative claim, but also a  
17 potential class claim as well as individual claims. So, the  
18 N-PCL 623 argument is only with respect to derivative  
19 claims.

20 With respect to a potential class claim as  
21 Intervenor suggested during oral argument today, the  
22 Intervenor have not alleged in their proposed pleading how  
23 they meet any of the requirements in Article 9 of the CPLR  
24 for bringing a class action; and so we believe that they do  
25 not have standing to assert any class claims on behalf of a

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1 class of NRA members.

2 And to briefly address an argument that the  
3 Intervenor made in their reply that now is not the  
4 appropriate time to consider whether they have standing  
5 under the N-PCL to bring a derivative claim; I would point  
6 your Honor to JG Club Holdings LLC v. Jacaranda Holdings  
7 LLC. That's 35 Misc3d and there, Supreme --

8 THE COURT: 35 Misc3d what?

9 MR. THOMPSON: 35 Misc3d 1217(A).

10 THE COURT: I didn't want to read the whole book.

11 MR. THOMPSON: And there, Supreme Court denied the  
12 motion to intervene where the intervenors sought to bring a  
13 derivative claim on behalf of an LLC, but failed to show how  
14 he meets the requirements of the LLC law to intervene.

15 So turning now, your Honor, to the requirements in  
16 CPLR 1012 and 1013 for intervention. Briefly, the  
17 Intervenor raised this intangible property rights theory  
18 under 1012(a)(3), but I'm comfortable resting on our papers  
19 with respect to that argument, your Honor.

20 And with respect to a statutory right to intervene,  
21 the Intervenor has relied heavily on N-PCL 1104, but it is  
22 our position that 1104 is applicable only in special  
23 proceedings, not plenary actions like this one. And that,  
24 in fact, intervention in special proceedings is governed by  
25 an entirely different provision of the CPLR.

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1                   So, now turning your Honor to 1012(a)(2) and  
2                   whether or not the Intervenor are or may not be adequately  
3                   represented in this action.

4                   Your Honor was exactly correct that the balance of  
5                   the interests that the Intervenor have are being adequately  
6                   represented by the New York Attorney General's Office on the  
7                   one hand and by the NRA on the other, and the Estate of  
8                   Mayer case that the NRA cited in their papers is exactly on  
9                   point for that proposition.

10                  With respect to any associational rights claims  
11                  that the Intervenor say that they have individually  
12                  separate and apart from what is held by the NRA  
13                  derivatively, the NRA has already shown that it is willing  
14                  to make arguments on behalf of the associational rights of  
15                  its members, and the Intervenor have not alleged how that  
16                  representation is inadequate with respect to the  
17                  associational interests that they'd have individually.

18                  And if your Honor has no further questions, I will  
19                  rest on the papers otherwise.

20                  THE COURT: Okay, thank you very much.

21                  Litigation makes strange bedfellows, but  
22                  understood.

23                  Mr. Douglas, Mr. Blaudeau.

24                  MR. BLAUDEAU: Yes, sir. I just want to direct the  
25                  Court on a couple of things. One is that the Court needs to



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1 at least consider in its decision-making the fact that we're  
2 not talking about just one isolated event in regard to the  
3 leadership issues or the corruptness of what was going on at  
4 the NRA.

5 This is something that has been going on for a  
6 number of years that has been rafted up in severity over the  
7 past few years; but there is plenty of information for the  
8 Court to look at in regard to the fact that Wayne  
9 LaPierre --

10 (Technical interference)

11 THE COURT: You cut out.

12 MR. BLAUDEAU: I'm sorry. What I was saying  
13 there's plenty before this Court indicating that a  
14 reasonable -- that a reasonable person might come to the  
15 conclusion that Wayne LaPierre has run the NRA almost as a  
16 dictatorship for a number of years. That includes the  
17 selection of Board members. There has been issues related  
18 to how Board members, themselves, were selected; how things  
19 went on between the president and the vice president of the  
20 NRA. There's plenty out there about what happed with Oliver  
21 North and the issues related to that.

22 The reason that's important is because, again,  
23 you're being asked to treat the NRA like it's a sane  
24 organization run by competent and caring people, and that's  
25 not what's the evidence in front of the Court. That's not

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1        why the Attorney General of New York sought to do what she's  
2        doing. That's not why she sought to ask for dissolution.

3                What she's saying in her papers is that it is  
4        almost a criminal enterprise, the NRA, and that the  
5        leadership stinks from top through the Board. Again, we  
6        can't just -- we can't apply reasonable rules to situations  
7        which are completely unreasonable and so the Court should  
8        consider that.

9                The only other thing I would ask the Court to do is  
10       to inquire as to the NRA as to what they've actually  
11       produced to their own members about what's going on in the  
12       litigation in New York, about what happened in the  
13       litigation in Texas, about what have they actually sent to  
14       their members other than the inflammatory kind of things  
15       I've seen, which suggests that Letitia James is the second  
16       coming of the devil and that all this is a political farce  
17       in an attempt to injure the Second Amendment rights of the  
18       NRA is completely politically motivated with no real  
19       admission or understanding to the members that there's been  
20       significant financial malfeasance in the organization for  
21       years, years.

22               So you're asked now as a judge to sit there and  
23       apply reasonable law to reasonable facts, but the problem  
24       for the Court is these are not reasonable facts. These are  
25       unreasonable facts, and I can tell you that the Intervenors

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1 will seek to see that a receivership or trustee is put in  
2 place, to see that a new Board is elected, to see that Wayne  
3 LaPierre's hands in control of the NRA are forever and  
4 permanently gone.

5 I just think we can't do this in a bubble. Let the  
6 NRA show you what they have told their members. I'm going  
7 to let George speak.

8 MR. DOUGLAS: Your Honor, would you allow me just  
9 two minutes or so?

10 THE COURT: Sure, of course.

11 MR. DOUGLAS: And it may be a little out of order,  
12 but with respect to Mr. Geisler's argument. What's the  
13 point of Section 1104 requiring notice to members of a  
14 dissolution action to be presented within -- I believe it's  
15 either 4 weeks or 30 days. I'm sorry, I'm drawing a blank  
16 on that. That the AG is required to give that notice  
17 initially, not later on. There must be some point --

18 THE COURT: 1104 is not AG actions.

19 MR. DOUGLAS: Well, I agree with that, except that  
20 she's also -- she, the AG, has tried to give this action a  
21 dual character, whether plenary, specialty proceeding. Let  
22 me just add, whether 1104 applies or not, the due-process  
23 cases from the US Supreme Court that we cited do apply, and  
24 they apply no matter what the statute purports to say or not  
25 say.

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1           When the government seeks to interfere with, impair  
2           or destroy an interest of a person, that person is entitled  
3           to meaningful notice and meaningful notice means beforehand,  
4           before the Court decides anything, not afterwards.

5           Next, I would say when Mr. Geisler mentions the  
6           Special Litigation Committee and the deference that should  
7           be given and so forth and so on, he's kind of leaping over  
8           the fact that whether it's -- whether that deference should  
9           be given is an issue of fact, which is not presently before  
10          the Court.

11          The Special Litigation Committee was appointed by a  
12          Board which the Attorney General alleges to be a rubber  
13          stamp and no special litigation, and by a president or an  
14          executive committee, which is part of the makeup of that  
15          Board and, therefore, part of the rubber stamp allegation or  
16          claim that the AG has made. So they're not entitled to  
17          deference here now sitting in front of you because that's a  
18          fact issue.

19          With respect to the allegation of futility, same  
20          way, fact issue. We have alleged -- our pleadings allege  
21          that demand on a Board would be futile. The evidence will  
22          show that, but right now that is a fact issue which the  
23          Court is not in position to decide today.

24          I looked in all of this before. In some case says  
25          the standard of review for 1012 intervention is blank and I

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1        didn't find that, but it is pointed out in our reply  
2        memorandum that you if you take this in the same way as a  
3        motion to dismiss, then you take our allegations at face  
4        value. And if the facts are later that those are incorrect  
5        or are not proven, that's a different issue. But right now,  
6        this is a fact issue and the Court is not in a position to  
7        decide.

8                Lastly, with respect to if you boil down  
9        Mr. Thompson's argument -- actually, if you boil down  
10       everybody's argument, the law is just what you sort of  
11       touched on which is they are saying to the Court, Justice  
12       Cohen, you're correct, the members who built the  
13       organization who have never been notified by this with any  
14       meaningful notice as -- forget 1104 -- as the US  
15       Constitution applies.

16               The members can see their organization highjack  
17       people who are alleged and who a federal bankruptcy judge  
18       stopped about one step short of finding as a fact and had  
19       serious conflicts of interest. Yes, the members can see  
20       that organization destroyed, liquidated and its assets given  
21       to somebody else and there's not a blessed thing that they  
22       can do about it and that is not the law, your Honor.

23               THE COURT: As you were saying that, just to finish  
24       up I take all your points and I guess the question is, well,  
25       what does one do about it? If you assume all the things you

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1 just said is that there are issues with counsel for the NRA,  
2 there are issues with the Attorney General, all of this; is  
3 there any law to suggest that the answer to that is to let  
4 the members intervene?

5 Because, again, the Court is here as a neutral  
6 party dealing with whatever comes up between the actual  
7 advocates. But your solution is, I think, problematic in  
8 the sense that you've raised problems or arguments as to the  
9 difficulty of the existing litigants to represent the  
10 members' interests; but it does occur to me that there's no  
11 authority that I'm aware of that the answer to that as  
12 opposed to we litigate this case, the AG makes their  
13 arguments, I don't know who makes an argument with respect  
14 to whether counsel is conflicted, but I'm not aware of any  
15 where the answer to that is, well, the two members can come  
16 in with very good lawyers and they're the ones who should  
17 carry the banner.

18 It's difficult. I get your point, and you've  
19 raised some good points, but I think that procedurally you  
20 still have a hurdle to get over and that is very hard to  
21 find a pathway in New York law, at least, to having it be  
22 solved the way you're proposing to solve it; but I will  
23 consider it.

24 MR. GEISLER: Your Honor, this is Mordecai Geisler  
25 on behalf of the NRA. May I just speak very briefly in

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1 response since they brought up a couple of points in  
2 referencing me directly?

3 THE COURT: Yes, name check rule, you get to  
4 answer, yes.

5 MR. GEISLER: Thank you. Counsel talked about  
6 inflammatory remarks. Counsel's remarks were full of  
7 unfounded and inflammatory remarks exaggerating the findings  
8 in the Bankruptcy Court. In fact -- and this is in our  
9 papers, I won't read the whole thing. Judge Hale found that  
10 there was a course correction in the NRA. That the  
11 whistleblower had been elevated who is now the CFO of the  
12 NRA. The judge found that the NRA understands the  
13 importance of compliance and, essentially, sent the NRA back  
14 to New York stating that it could fulfill its mission and  
15 continue its governance and internal controls, improvement  
16 to its internal controls and governance.

17 So that's directly contrary to what the picture of  
18 that the Proposed Intervenors are trying to paint.

19 One other -- just two very quick points.

20 The allegations with respect to the Board, with  
21 respect to the Special Litigation Committee, those are  
22 completely conclusory. As a matter of law, counsel  
23 suggested that that's not ripe for consideration.

24 As a matter of law, conclusory allegations do not  
25 trump the deference that's afforded to the Special

## Proceedings

1       Litigation Committee.

2               One last point, just for the record, counsel  
3       earlier made a statement that suggested that the NRA ceased  
4       its representation of Mr. LaPierre based on a letter or  
5       something that counsel had filed. That's simply not true.

6               The NRA has never represented Mr. LaPierre in this  
7       action.

8               THE COURT: You mean your law firm has never  
9       represented?

10              MR. GEISLER: I'm sorry. The Brewer firm has never  
11       represented Mr. LaPierre in this action. It has only  
12       represented the NRA. The Brewer firm has had -- my firm has  
13       had engagement -- was engaged to represent Mr. LaPierre in  
14       two other actions. Not this one. But all the way back in  
15       2019 -- and this is set forth in our papers with the  
16       affidavit of Mr. LaPierre in support and I won't go through  
17       all the details. But as far back as 2019, it was clear in  
18       the engagement letters with Mr. LaPierre that if even the  
19       appearance of any conflict would arise, that the Brewer firm  
20       would represent the NRA and that Mr. LaPierre would retain  
21       separate counsel, which he has in this action and in every  
22       other action.

23              So, I just didn't want that to go unanswered.

24              THE COURT: Mr. Geisler, what happens -- there's no  
25       claim, obviously, at this point against the law firm, but

bp



## Proceedings

1        what happens if people in your firm become material  
2        witnesses?  Couldn't there potentially down the road be an  
3        advocate-witness problem?

4                MR. GEISLER:  Well, I don't want to speculate, your  
5        Honor, and I don't want to guess on what the law is in that  
6        regard.  I will say that there's nothing in the complaint of  
7        the New York Attorney General that would suggest that's  
8        going to be an issue.

9                I know that the Proposed Intervenors raised issues  
10       that were peculiar or specific to the bankruptcy proceeding  
11       where a US Trustee there for reasons specific to the  
12       bankruptcy proceeding had raised objections to the Brewer  
13       firm representing the NRA in outside litigation.  That was  
14       never decided by the Court.  But with respect to the case  
15       here in front of your Honor, I don't see the prospect of  
16       that.  And I don't want to speculate or guess as to  
17       circumstances or eventualities that might occur, but as of  
18       right now, I don't see that as a possibility.

19               THE COURT:  But your firm did in the past in other  
20       matters represent individual executives; did it not?

21               MR. GEISLER:  It represented Mr. LaPierre in two  
22       cases that we have set forth in our papers, one which has  
23       been dismissed and has been for awhile.  The other one is a  
24       civil case pending in Texas; but as I said, that  
25       representation ended as soon as this case was commenced

## Proceedings

1           so --

2                   THE COURT: Well, if evidence developed during the  
3           course of the case that persuaded your firm that, well,  
4           actually, there is a legitimate claim against one of the  
5           executives that you had previously represented; and as  
6           Blaudeau was talking about, do you think your firm would be  
7           in a position to make those arguments?

8                   MR. GEISLER: Our firm would be in a position to  
9           make any argument guided by the Board and the Special  
10          Litigation Committee. That's who we report to.

11                  THE COURT: So, your firm could argue to me that  
12          the right result here is something that's adverse to one of  
13          your former clients, or would you have to bring somebody  
14          else in to do that?

15                  MR. GEISLER: Well, again, I don't want to  
16          speculate on exactly what would occur; but it is clear and  
17          this is in our papers, it's clear from Mr. LaPierre's  
18          affidavit that he understands that if there was any  
19          eventuality where his interest would not be aligned with the  
20          NRA, then we would be representing the NRA.

21                  THE COURT: Well, there's a difference between that  
22          kind of advance waiver and whether using information that  
23          was gained during the prior reputation -- again, I'm  
24          speculating a bit, but it is a relationship that is at  
25          least, potentially, fraught with difficult issues; but,

bp

## Proceedings

1       again, this isn't a motion for disqualification so that's  
2       not specifically what's in front of me.

3               All right, I'm going to reconvene at four o'clock.  
4       I'd ask you all to stay on the line. Just turn your cameras  
5       and microphones off since I'll still be in the courtroom,  
6       and I'll either have some questions or I'll decide whether I  
7       can give you a ruling on the motion when I get back.

8               So I'll see you in ten minutes.

9               (Whereupon, at this time a short recess was then  
10       taken.)

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12                       \*       \*       \*       \*       \*

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14                       (Continued on next page)

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## DECISION

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THE COURT: Welcome back, everyone. Thank you all for exceptionally good argument, which was --

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MR. BLAUDEAU: Judge, this is Francois. I apologize for interrupting you. I just wanted to say this before you went back to talk, but I wanted to just make sure the Court -- we had sent a letter to the Court last Friday. We had a current Board member of the NRA that has asked to join our action and we are going to be amending our action to add him; and just from a procedural standpoint, I just wanted to make sure that the Court had an opportunity to be aware of that. We had sent a letter --

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THE COURT: I saw it. Look, I'm making the decision based on the motion to intervene that's in front of me. If there's a different intervention motion that's made at some later point, then I will deal with that then.

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As I hope you've been able to tell, I've been thinking about this issue in advance of the hearing and have read through the papers and the cases; and although I made a few revisions as I was going along in the hearing, I'm ready to give you a decision on the motion and I'm going to lay it out at some length.

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24

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The motion for leave to intervene is denied.

I'll get into the details of the law in a few minutes, but first a few general points.

bp

## DECISION

1                   This case is, first and foremost, a law enforcement  
2           matter. The NRA was founded in New York almost 150 years  
3           ago and remains subject to New York law governing  
4           not-for-profit entities, including the jurisdiction of this  
5           Court and oversight by the Attorney General. This case is  
6           about whether the management has acted inappropriately and  
7           whether, in an extreme case, the Association has acted in a  
8           way that should deprive it of the right to continue as a New  
9           York not-for-profit entity.

10                   Generally, shareholders or members of companies do  
11           not have a right to intervene as separate parties in a law  
12           enforcement action, no matter how great their financial or  
13           emotional or associational interest is in the entity. It is  
14           typically a matter between the law enforcer, here the  
15           Attorney General, the company and the Court. And as a  
16           logistical matter, imagine what this case would turn into if  
17           each or any number of the millions of members had a right to  
18           intervene as parties freely filing motions and briefs at  
19           every turn. My plate is more than full with the parties I  
20           already have.

21                   As I'll discuss below, the law does provide an  
22           avenue for NRA members to gather together as a group to sue  
23           management for harm to the company or to bring derivative  
24           claims generally on behalf of the company; but there are  
25           specific requirements for that under New York law which are

bp

## DECISION

1 not met here, most importantly, that it be at least five  
2 percent of the membership. Those limits are there to  
3 protect against small number of members -- here, it's only  
4 two -- imposing costs on the company and all the other  
5 members in a situation in which they may or may not  
6 represent a widespread view.

7 The questions raised about the NRA's choice of  
8 counsel may or may not be legitimate, it is premature for me  
9 to determine; but in the circumstances here that goes more  
10 to whether it is appropriate for them to represent the NRA  
11 in this case, not whether lawyers for two of the members  
12 should take the baton to represent or bolster the  
13 representation of the Association.

14 As I'll get to later, the members do not have  
15 individual financial or property interests in the NRA's  
16 assets. So, the vast majority of the due process cases that  
17 the Intervenor cite are off point. I think maybe with that  
18 exception, they involve personal rights, property rights,  
19 liberty rights, but not what we have at issue here.

20 In the end, while I agree that the Proposed  
21 Intervenor and their counsel and other NRA members bring a  
22 valuable perspective to the issues in this case, they have  
23 not made a showing that their intervention as independent  
24 parties is warranted, either as a matter of right or as a  
25 matter of discretion.

bp

## DECISION

1 I am, though, open to discussing with the parties  
2 an organized process to receive the views of members who  
3 wish to express views on the substantive issues in the case.

4 The statute, particularly when it talks about  
5 dissolution, makes clear -- there's a quote from the  
6 statute. Quote, In an action brought by the Attorney  
7 General, the interest of the public -- this is a dissolution  
8 action brought by the Attorney General -- the interest of  
9 the public is of paramount importance. The interest of the  
10 public includes the interest of NRA members.

11 So while the members may not be able to intervene  
12 to pursue their own claims and defenses as parties in this  
13 case, they are free to make their views known in other ways.  
14 And as I said, I'm open to discussing with the parties how  
15 best to do that. It won't be something that's in the  
16 statute, but I think creative minds can find a way that in  
17 the end of the day, if and when the dissolution question  
18 comes up in particular, I would imagine there are ways to  
19 take input from sources that I suspect both the Attorney  
20 General and the NRA view as within the ambit of their  
21 concerns.

22 So with that as the broad background, I'm going to  
23 go into the details of why the motion must be denied.

24 There are two kinds of intervention: One is as a  
25 matter of right and it's where the Court is required to

## DECISION

1 permit the intervention; and the other is in the Court's  
2 discretion and this motion fails on both.

3 I'll start with the mandatory intervention or  
4 intervention as of right, which is covered by Section 1012  
5 of the CPLR, and there are three prongs to that or three  
6 possible grounds.

7 One, is if the statute confers an absolute right to  
8 intervene; or

9 Two, is when the representation of the person's  
10 interest by the parties is or may be inadequate and the  
11 person is or may be bound by the judgment; or

12 Three, when the action involves the disposition or  
13 distribution of or the title or a claim for damages or  
14 injury to property and the person may be affected adversely  
15 by the judgment.

16 So going through each of those relatively quickly  
17 and I think in doing it, it's helpful to separate the two  
18 kinds of claims we have here. On the one hand the  
19 dissolution claims, and on the other hand the claims against  
20 the individual defendants.

21 For the dissolution claim, the first argument that  
22 the Intervenors make is that they have a right to intervene  
23 under Section 1104 of the Not-For-Profit Corporation law;  
24 but as discussed briefly during the argument, that is  
25 inapplicable here.

bp



## DECISION

1           That provision sets out conditions "upon the  
2           presentation of a petition," which refers specifically to a  
3           petition for judicial dissolution under Section 1102. The  
4           procedure under 1104, therefore, relates to judicial  
5           dissolution claims by directors and members, which are  
6           brought by a petition.

7           1104 does not apply to this action at all, which is  
8           a plenary action brought by the Attorney General, which  
9           asserts a host of claims against the NRA and the individual  
10          defendants under the Attorney General's specific authority  
11          under the Nonprofit Corporation Law, as well as other laws  
12          in New York.

13          The Intervenors note that the Attorney General  
14          cites another portion of the Nonprofit Corporation Law,  
15          which states that the Attorney General may bring an action  
16          to enforce any right given under this chapter to members, a  
17          director or an officer of the company. That in that  
18          situation, the Attorney General has the same status as  
19          members, directors or officers; but that section works to  
20          add to the AG's rights under the law, not to limit the  
21          rights granted expressly to the Attorney General in the  
22          statute and, in particular, Section 1101 which gives the  
23          Attorney General in her own name the right to seek, among  
24          other things, dissolution.

25          Put another way, even if the Attorney General has

bp

## DECISION

1 the same status as a member, director or officer for some  
2 purposes, it exercises those rights differently and in her  
3 unique role as a law enforcement officer and with  
4 supervisory authority over nonprofit entities. That  
5 distinction between an ordinary private lawsuit and an  
6 action brought by the Attorney General is etched into the  
7 Not-For-Profit Corporation Law.

8 The Attorney General, as a law enforcement officer  
9 with regulatory oversight, can seek to dissolve a nonprofit  
10 corporation on multiple grounds and is not limited to the  
11 conditions imposed by Section 1102; and, therefore, this  
12 action is not subject to the notice requirements under  
13 Section 1104.

14 Moving to the claims against the individuals, which  
15 are derivative claims. As a threshold matter -- and this is  
16 going to cut across many different fronts here -- these  
17 Proposed Intervenors lack standing.

18 Section 263 of the Not-For-Profit Corporation Law  
19 provides that "an action may be brought in the right of a  
20 domestic or foreign corporation to procure a judgment in its  
21 favor by five percent or more of any class of members," a  
22 requirement clearly not met by the two Proposed Intervenors  
23 here.

24 Again, as I said the point of these provisions is  
25 to ensure that the entity is not forced to engage in

## DECISION

1        litigation and including the management and distraction and  
2        expense at the instance of small number of members, however  
3        well intentioned they may be and who may or may not reflect  
4        the views of other members.

5                    The Proposed Intervenors really have no substantive  
6        response to this argument. They make the procedural point  
7        that this is a motion to intervene, not to dismiss, but that  
8        is unavailing. I'm not being asked to render a judgment on  
9        the merits of the claims. I'm being asked to enforce a  
10       clear statutory prerequisite to bringing those claims. And  
11       there is, obviously, no fact dispute as to whether these  
12       Intervenors constitute five percent of the NRA's membership.  
13       It would be inefficient, to say the least, to permit  
14       intervention only to immediately dismiss the claims on a  
15       motion to dismiss. Nor is there any cited authority even  
16       allowing the Court to grant intervention when there is  
17       plainly no standing to bring the underlying claims.

18                   In addition, as also discussed in the argument, the  
19        Intervenors haven't complied with the demand requirement  
20        under the Not-For-Profit Corporation Law which states that  
21        in a derivative action, "the complaint shall set forth with  
22        particularity the efforts of the plaintiff or plaintiffs to  
23        secure the initiation of such action by the Board or the  
24        reason for not making such effort."

25                   The Intervenors argue that the demand would have

## DECISION

1        been futile because it would require the Board to scrutinize  
2        their own misconduct. But as the NRA points out, the Board  
3        consists of 76 members. There's a Special Litigation  
4        Committee, and the Proposed Intervenors have not alleged  
5        specific facts with particularity showing that a majority of  
6        the Board is complicit in any alleged wrongdoing. Because  
7        of the claim of demand futility lacks specificity, they have  
8        failed to satisfy the requirements of Section 623 and,  
9        therefore, lacks standing to bring derivative claims.

10            Moving over to the second prong of Section 1012,  
11        the adequacy of representation. Again, starting with the  
12        dissolution claim. With respect to defending the  
13        dissolution claim, the interests of the NRA and its members  
14        are clearly aligned, mollifying any due-process concerns  
15        raised by the Intervenors. They fail to show how they would  
16        advance different arguments or facts against the AG's claim  
17        than those currently being litigated by the NRA. As a  
18        result, the Intervenors have not established that their  
19        interests regarding claims or defenses against the AG are  
20        inadequately represented.

21            It is true that the AG has taken the position in  
22        its motion to dismiss counterclaims that the NRA lacks  
23        standing to enforce its members' associational rights. Even  
24        assuming that's true which I'm not deciding today, the  
25        context is different here. In the other motion, the AG is

bp

## DECISION

1       arguing that the NRA cannot bring a civil rights claim under  
2       Section 1983 for violation of their members' rights, but  
3       that's not what's going on here.

4               The Intervenors are not looking to bring individual  
5       claims under Section 1983. Instead, they're looking to  
6       defend a claim for dissolution aimed at the NRA as an  
7       entity, which is about whether this single organization has  
8       forfeited its right to operate as a not-for-profit in New  
9       York. Whatever associational rights that implicates its  
10      members are collective and can be litigated by the NRA  
11      itself.

12             The Intervenors do not cite any authority holding  
13      that the dissolution of an entity necessarily implicates the  
14      constitutional rights of the entity's members such that  
15      every member has the right to intervene. In fact, I've seen  
16      none.

17             The cases relied on by the Intervenors concern the  
18      deprivation of individual rights. They cite various Supreme  
19      Court cases, such as Mennonite Bd. of Missions, 462 US 791  
20      and Hamdi v. Rumsfeld, 542 US 507. Those involve real  
21      property interests and the Hamdi case is a personal liberty  
22      interest. So those are not on point.

23             Moving to the derivative claims, again, the  
24      threshold is that they don't have standing under New York  
25      law to bring derivative claims because they don't have

## DECISION

1       sufficient numbers. And here -- this is the flip side that  
2       we were talking about during the argument -- is that while  
3       the Intervenors argue that the Attorney General does not  
4       have their best interest at heart in the dissolution, they  
5       do argue that the Attorney General is on the right track in  
6       the derivative claims.

7               So, they don't really cite any new arguments or  
8       tactics that they would undertake that the Attorney General  
9       is not doing and, specifically, to seek that the individual  
10      defendants pay the NRA restitution for all excessive,  
11      unreasonable and excess benefits that were paid to and  
12      unjustly enriched those defendants in violation of law and  
13      NRA bylaws.

14             So these particular Intervenors at least, the  
15      interests that they are positing are represented by the  
16      litigants, albeit on different issues.

17             Turning to the concerns about NRA's counsel raised  
18      by the Intervenors, it really in this setting is in the  
19      nature of a motion to disqualify, not a motion intervene.  
20      That type of motion can only be brought by the law firm's  
21      current or former client.

22             The attorney-client relationship between the Brewer  
23      firm and NRA can't be imputed to the NRA's membership writ  
24      large. So the Proposed Intervenors lack standing to raise  
25      that specific concern about the Brewer firm.

bp

## DECISION

1 I don't have an evidentiary basis at this point to  
2 conclude that the Special Litigation Committee set up by the  
3 NRA, which shares the Brewer firm, is incapable of  
4 determining who should represent the Association, and I'm  
5 not prepared to simply just accept conclusions that have  
6 been reached by others at the moment in this case. At this  
7 point, I have no basis for adopting that concern. So I  
8 don't think it gives rise at this point to a ground for  
9 intervention.

10 This is an issue that might evolve as the case  
11 proceeds and the record develops. I raise the point about a  
12 potential advocate-witness problem, but, again, that's  
13 speculation at this stage.

14 And the last part of the intervention as of right  
15 relates to whether the Proposed Intervenors' property  
16 interests are going to be litigated and decided without  
17 their involvement. And here, though, as both the Attorney  
18 General and the defendants point out under New York law, the  
19 NRA's assets are not collectively owned by its members.  
20 They are instead held in trust by the NRA for unnamed  
21 beneficiaries in accordance with the NRA's charitable  
22 mission; and under the Not-For-Profit Corporation Law  
23 specifically, "no part of the company's assets, income or  
24 profit can be distributed to or inure to the benefit of its  
25 members, directors or officers except to the extent

bp

## DECISION

1       permitted "by the N-PCL.

2               So, therefore, for both the dissolution claim and  
3       the proposed derivative claims, the Proposed Intervenor  
4       have not demonstrated a property right warranting mandatory  
5       intervention.

6               Finally, turning to permissive intervention, which  
7       as the phrase implies is within the discretion of the Court.

8               Under CPLR which Section 1013 provides that in  
9       exercising that discretion, the Court shall consider whether  
10      the intervention will unduly delay the determination of the  
11      action or prejudice the substantial rights of any party.

12              The reasons for denying intervention as a matter of  
13      discretion overlap with the ones I've just described, in  
14      particular, the fact that the Proposed Intervenor lack  
15      standing to bring their derivative claims means I really  
16      don't have discretion to allow them to prosecute those  
17      claims.

18              For the dissolution claim, the Non-Profit  
19      Corporation Law in my view envisions a separate procedure  
20      for an Attorney General action in contrast to an ordinary  
21      private lawsuit.

22              In addition to all of that, there is a substantial  
23      risk, in my opinion, of unduly delaying resolution of this  
24      litigation by permitting this intervention which, at least  
25      in my mind, could lead to others. These Intervenor have a

bp



## DECISION

1       very particular point of view. It does not take a lot of  
2       imagination to think that if these Intervenorors were  
3       permitted to join the case, other groups of intervenors with  
4       a different take on the situation would come to me and ask  
5       the same, and I would find it difficult to distinguish and I  
6       just think that this would spiral or well could spiral out  
7       of control with all sorts of duplication and different  
8       points of view.

9               I already have a lot of parties here. I've been  
10       fortunate that the defendants, in particular, have been able  
11       to as in most cases avoid duplication; and I have no idea,  
12       but I have some concerns that allowing broad-base  
13       intervention would be very difficult to manage.

14              The question of whether the motion is timely, I  
15       think there's a decent argument that it is not timely. This  
16       issue was raised by counsel for the Intervenorors a while ago.  
17       I think the reason why I'm not relying on that is the  
18       bankruptcy was an intervening fact. As it turns out, at  
19       least in my opinion, there was no automatic stay. This  
20       Court never entered a stay. There is an exception from the  
21       automatic stay for actions by the State. But, in any event,  
22       the case did go into somewhat of a hiatus while we waited  
23       for the Texas bankruptcy action to take place. So I'm not  
24       going to rely on timeliness as an independent ground.

25              So having said all that, as I mentioned at the

bp

## DECISION

1 beginning I'm still open to finding an avenue with the  
2 parties for the views of the membership at the appropriate  
3 time and in an organized fashion to be provided to the  
4 parties and then the parties can determine how best to  
5 present that to the Court in the context, in particular, of  
6 the dissolution claim.

7 As I mentioned, the Not-For-Profit Corporation Law  
8 specifically directs that in considering dissolution in an  
9 action by the Attorney General, I must consider the interest  
10 of the public being of paramount importance. And I think in  
11 that setting, I think very sophisticated and interesting  
12 perspective of these members could be useful and any number  
13 of other sources might be useful for me. So I would leave  
14 that open.

15 Again, I suspect that both the NRA and the Attorney  
16 General would be cooperative in accepting input from that  
17 source.

18 So, I know that went on for awhile, but I wanted to  
19 be thorough.

20 So, in sum, the motion to intervene is denied.

21 As I mentioned to Mr. Blaudeau, I decided the  
22 motion that's in front of me. I'm not prejudging any other  
23 motion, but nor do I think it was sensible to wait for  
24 another intervenor to come forward. If the other intervenor  
25 is a Board member, I can't prejudge now whether that makes

bp

## DECISION

1 any difference in terms of the analysis I've just described.  
2 I'll have to just take that as it comes. If they decide to  
3 intervene and a motion is made, I will review it thoroughly.

4 Okay, is there anything else?

5 MR. BLAUDEAU: Yes, sir. As a point of order, we  
6 would like the Court because it is highly probable that we  
7 will be bringing another motion on behalf of Board members,  
8 because as the news gets out and this process develops, more  
9 and more people are starting to understand what the real  
10 issues are and are wanting to do something about it.

11 So I would ask that the Court indulge us to leave  
12 our pro hac vice applications intact so that we don't have  
13 to reapply should we file an additional motion. Maybe if  
14 the Court would grant us sixty or ninety days or whatever  
15 the Court wants to do.

16 THE COURT: I granted those motions today, and I  
17 don't intend to withdraw them. So, that's fine.

18 MR. BLAUDEAU: Yes, sir. Thank you. We appreciate  
19 you taking the time to explain your ruling in the great deal  
20 you did, and we appreciate the attention you've given it.

21 THE COURT: And I appreciate your advocacy.  
22 Anything from else the parties?

23 MS. CONNELL: Yes, your Honor. This is Monica  
24 Connell from the Attorney General's office.

25 THE COURT: Yes.

## DECISION

1 MS. CONNELL: I'm sorry to interrupt you, but I  
2 wanted to raise the issue of the protective order.

3 The parties weren't able to resolve and agree upon  
4 a protective order. We submitted two different versions.  
5 One was at Docket No. 309. The other was at Docket No. 326.  
6 We narrowed down the disputes, but there are still some  
7 disputes; but the lack of a protective order has been  
8 greatly impeding discovery in the case.

9 So I would just ask if the Court would like any  
10 further discussion on this or what we can do to sort of  
11 speed the plow on that issue?

12 THE COURT: I heard about that one on the way in  
13 today. We're feeling a lot of things at the same time in a  
14 lot of different cases. So I will be candid that I have not  
15 dug into the details of that and I will.

16 We're going to need to set up a discovery  
17 conference anyway; but if this is creating a roadblock, let  
18 me take a look at the competing proposals and have the  
19 parties put their rationale in front of me, as well?

20 MS. CONNELL: Yes, your Honor.

21 THE COURT: I'd like to make it seem like that I  
22 read every NYSCEF filing as it comes in and totally absorb  
23 it, but I don't think that's possible. Typically, I'm able  
24 to deal with those without argument. If there's any  
25 specific thing that both sides want to mention while I'm

## DECISION

1           here, we have five or ten minutes if you want.

2                       MS. CONNELL: Your Honor, the parties did set out  
3           their different views and they're set out in letters in the  
4           docket numbers I cited. Again, 309 is the Attorney  
5           General's and 326 is the NRA's and some other defendants'  
6           letters and each letter attaches a proposed protective order  
7           and notes what the remaining issues are.

8                       I don't know that we need to go into those. I'm  
9           happy if you would like that. I would welcome a discovery  
10          conference because we anticipated probably reaching out to  
11          the Court soon to request a conference on potentially with  
12          regard to --

13                      THE COURT: Well, why don't we do this. I'll look  
14          at those submissions; and if for some reason we can't decide  
15          based on the papers, then we'll role that into the discovery  
16          conference that Mr. Narim will set up.

17                      MS. CONNELL: Thank you, your Honor.

18                      THE COURT: All right, so my written order is going  
19          to be very brief and just refer back to the oral argument  
20          transcript, so I would ask you to stay on the line with  
21          Bonnie to get her contact information to order the  
22          transcript. My order will direct the parties to upload the  
23          transcript once they receive it. So I'd appreciate you  
24          staying on.

25                      Again, I very much appreciate the excellent job of

bp

DECISION

1           counsel. It makes my job a lot easier, and I appreciate  
2           your time.

3                   MS. CONNELL: Thank you, your Honor.

4                   MR. GEISLER: Thank you.

5                   MR. DOUGLAS: Thank you.

6                   \*           \*           \*           \*           \*

7                   (Certification on next page)

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C E R T I F I C A T I O N

INDEX NO. 451625/20 State of New York v. National Rifle  
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THIS IS HEREBY CERTIFIED TO BE A  
TRUE AND CORRECT TRANSCRIPT.

*Bonnie Piccirillo*

BONNIE PICCIRILLO  
OFFICIAL COURT REPORTER

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