

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

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

Plaintiff,

v.

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

Defendants,

ROSCOE B. MARSHALL, JR., individually and
derivatively on behalf of THE NATIONAL
RIFLE ASSOCIATION OF AMERICA, INC.,

Intervenor-Defendant,
Cross Claimant, and
Counter Claimant.

Index No. 451625/2020

Hon. Joel M. Cohen

Part 3

**AFFIDAVIT OF ROSCOE B.
MARSHALL, JR. IN SUPPORT
OF MOTION TO INTERVENE**

STATE OF TEXAS
KENDALL COUNTY

Roscoe B. Marshall, Jr., being duly sworn, deposes and says:

1. My name is Roscoe B. Marshall, Jr. I make this affidavit in support of my Motion to Intervene in this action. I am a resident of the State of Texas; over the age of eighteen years; have never been convicted of a felony; and fully competent to make this affidavit and otherwise give testimony in the courts of New York. I make this affidavit on personal knowledge unless otherwise noted. I am also known as "Rocky" Marshall.

2. I am a Life Member of the National Rifle Association ("NRA") and a Director of the NRA. I am filing a Motion to Intervene and derivative action in the name and right of the NRA

because as I explain hereafter:

a) In the last three years there have been numerous and serious concerns raised by NRA members, former directors, and persons outside the NRA about the management of the NRA by the Individual Defendants in this case. These concerns include abuses of executive authority, financial improprieties and cronyism such as excessive compensation paid to NRA executives and related parties, vendor contracts and professional engagements that violated NRA policy and financial controls as well as prudent business practices, lack of transparency resulting from management's withholding financial and other information from all but a few Board members, and complete lack of any effective Board oversight and control of management.

b) During this time there have been numerous requests to the NRA Board from NRA members and former directors (including me) to investigate these issues, but the Board has failed or refused to do so in any meaningful way. In all such instances the Board has simply (as the Attorney General's complaint says) "rubberstamped" the actions of Wayne LaPierre, the Brewer law firm, and a few other NRA executives and officers chosen by LaPierre.

c) It is crystal clear that despite these requests and despite (most recently) the concerns about these issues raised by Judge Harlin Hale in the NRA's disastrous Chapter 11 case and the allegations by the Attorney General in this action as to such improprieties, the NRA Board will not fulfill its fiduciary duty. These issues have been raised by intelligent and serious people but the NRA Board has failed and refused to objectively investigate or analyze any of them.

3. I became a member of the NRA's Board on January 19, 2021 following the resignation of Director Duane Liptak. I was appointed to fill the vacancy resulting from his resignation because as provided in Article IV, Sec. 2 of the NRA's Bylaws, I was the board candidate receiving the next largest number of votes in the previous NRA director election.

4. I believe Mr. Liptak resigned immediately after learning that the NRA's Chapter 11 bankruptcy petition was filed on January 15, 2021 without the NRA Board's knowledge or approval. See the attached email (Ex. A hereto) dated January 15, 2021 in which Mr. Liptak replied to an announcement of this filing from John Frazer, NRA Secretary and General counsel. Mr. Liptak said "*Am I to assume that no one thought this worthy of discussion when the board was assembled 8 days ago?*" [referring to the Board's January 7, 2021 meeting, which the minutes show there was no mention of any "reorganization" or bankruptcy filing.] During the course of the bankruptcy case I learned that Wayne LaPierre and the Brewer law firm had been actively preparing for this filing since at least November 2020 and possibly earlier, yet the Board was never informed of nor asked to consider or authorize this filing before it was done. This was a violation of Article VI, Sec. 2 of the NRA's Bylaws which reserve such authority to the Board. Indeed the Brewer law firm (which I believe to be the architect of the Ch. 11 debacle) and Wayne LaPierre had to ask the Board to ratify the filing at the March 28, 2021 Board meeting (Ex. H hereto). I was the only Board member opposing this resolution.

5. After becoming a Director I began to review various NRA documents, Board meeting minutes and records in order to familiarize myself with the NRA's Chapter 11 case which had just been filed. I was already aware of the Attorney General's suit for dissolution and I was concerned that there were valid grounds for its allegations of fiduciary breaches by the NRA's top executives and failures of proper oversight by the NRA's Board, especially after learning that it was filed without NRA Board approval.

6. The exhibits attached to this affidavit are some of many documents I reviewed, along with copies of emails I sent to all other NRA board members calling their attention to the issues implicated by the Attorney General's suit, the actions of Wayne LaPierre and the Brewer firm in

filing the Chapter 11 case without Board approval, and the need for NRA Board action to exercise the Board's fiduciary duties. Some exhibits are highlighted for ease of reference.

- A. January 15, 2021 email from Duane Liptak in reply to January 15, 2021 email from John Frazer to the NRA Board about the NRA Chapter 11 filing. This was an exhibit in the Chapter 11 case, and refers to the Board's January 7, 2021 meeting, at which the minutes show there was no mention of any "reorganization" or bankruptcy filing. See Ex. D to my affidavit.
- B. April 18, 2019 letter to NRA General Counsel and Audit Committee Chair from NRA President and First Vice President regarding Brewer law firm bills. This was an exhibit in the Ch. 11 case.
- C. "Summary Sheets" of monthly invoices for legal fees from the Brewer firm, December 2018 through January 2021, and various emails and correspondence regarding Brewer's fees, including a \$5,000,000 wire transfer from the NRA to the Brewer firm on January 4, 2021. These documents were exhibits in the Ch. 11 case, and to my knowledge the NRA Board never saw them or reviewed them.
- D. Minutes of the January 7, 2021 NRA Board Meeting (filed in the present action as Doc. # 296).
- E. My March 15, 2021 email to the NRA Board regarding NRA mismanagement and the need for a special meeting to address the failure of NRA controls and the Attorney General's claims.
- F. My March 17, email to the NRA Board urging the Board to support a motion for examiner in the Ch. 11 case in order to "*confirm or deny the allegations swirling around the association regarding the many accusations regarding mismanagement, fraud, and malfeasance.*"
- G. My compilation of financial data from the NRA's IRS Form 990 for the years 2013-2019. This was sent to the Board as an attachment to my March 15, 2021 email to the NRA Board.
- H. Minutes of the NRA Board's March 28, 2021 board meeting at which the NRA Board was asked to ratify the NRA's Ch. 11 filing. I was the only Director voting against this. (Filed in the present action as Doc. # 299).
- I. My March 18, 2021 email to the NRA Board regarding the Brewer firm's conflict of interest and attorney fees charged to the NRA.
- J. My July 1, 2021 email to the NRA Board regarding oversight and fiduciary

duties, and calling for a special meeting of the Board to address these issues.

K. My August 27, 2021 email to the NRA Board regarding withholding of information from Board members and the need for the Board to regain control of the NRA.

L. My resume and biographical information.

7. I am requesting intervention in this action for the following reasons:

a) To seek the removal of the Individual Defendants as officers and executives of the NRA and to assist in recovering any and all misspent NRA funds for the benefit of the NRA and its members if the Attorney General's allegations against the Individual Defendants are proven.

b) To oppose the extreme, unnecessary, unlawful and improper remedy of dissolution demanded by the Attorney General.

c) To protect and defend the interests of myself and all other NRA members in the NRA as an organization, and to oppose any remedy in this action that would divest the NRA's reported 5.5 million members of their similar interests in the NRA's assets and organizational value, whether by dissolution or otherwise.

d) To protect my rights and those of all NRA members to freedom of association and speech by membership in the NRA under the First Amendment of the U.S. Constitution and similar provisions of the New York State constitution.

e) To call this Court's attention to significant conflicts of interest by the Brewer firm now representing the NRA in this action; to seek the disqualification of this firm from further representation of the NRA here; and to seek truly independent counsel for the NRA in this case.

f) To request that the Court require the Attorney General to immediately provide a comprehensive notice of this case to all NRA members by mail or email so that each member

may be informed of this case now, follow its progress, and intervene or otherwise take action to lodge objections with the Court.

g) To request that the Court appoint a temporary Receiver to manage the day-to-day ordinary business of the NRA until a new Board of Directors is elected by the membership in a general election pursuant to a plan approved by the Court and new executive management is appointed by the new Board; and further to pursue recovery of all amounts that may be due to the NRA from the Individual Defendants and all other persons or entities that received excessive, improper and/or unauthorized payments and benefits at the expense of the NRA by the actions of the Individual Defendants.

8. I have reviewed the Attorney General's complaint in this case. Although I am not a lawyer and not familiar with New York law, I understand from the complaint that the New York Attorney General alleges serious financial and tax reporting improprieties by the Individual Defendants in their capacities as NRA officers and executives. I also understand that the Attorney General alleges the Individual Defendants breached their fiduciary duties to the NRA and its members, and did so solely for their own personal benefit. I further understand from the complaint that the Attorney General alleges that the NRA Board of Directors has failed to provide any meaningful oversight or accountability of the individual defendants, and has been a "rubber stamp" for Mr. LaPierre in his complete control of the NRA. Based on my years of experience and familiarity with the NRA, my review of numerous NRA documents as a member of the NRA Board, and my review of exhibits and testimony in the NRA's Ch. 11 case, I believe these allegations to be true.

9. I further understand that the Attorney General's allegations included use of NRA money for personal expenses by Wayne LaPierre, the NRA's Executive Vice President and CEO

as well as his closest assistants John Frazer, Wilson "Woody" Phillips, and Joshua Powell.

Additionally I understand from the complaint that there may be other payments to NRA officers and/or directors as well as third parties which were not properly authorized or audited and which may be excessive.

10. I believe there is substantial evidence that the Brewer law firm has been charging the NRA excessive legal fees since they were hired by Wayne LaPierre in 2018. The NRA Board has never investigated or reviewed these bills, and as far as I can tell from my investigation, has never even seen them. For example,

a) Exhibit B to my affidavit is a letter from the NRA's former president and first vice-president, Oliver North and Richard Childress, suggesting that the NRA's outside counsel William Brewer and his firm, Brewer Attorneys & Counselors, were billing the NRA excessive amounts of legal fees that were unilaterally approved by Wayne LaPierre without proper audit or oversight by the NRA Board or other NRA personnel. This letter detailed the Brewer firm's legal bills to NRA that had averaged "\$97,787 per day, seven days a week, every day of every month" for the first quarter of 2019. This letter detailed previous requests for copies of Brewer's legal bills and called for an independent audit and financial review, which were refused by the NRA's top officers. The North/Cotton letter stated that "*Our oversight of the Brewer firm is wholly inadequate.*"

b) Exhibit C to my affidavit is a copy of "Summary Sheets" for monthly legal fees of the Brewer firm for the period December 2018 through January 2021, along with various emails and correspondence regarding Brewer's fees, including a \$5,000,000 wire transfer from the NRA to the Brewer firm on January 4, 2021. These documents were exhibits in the Ch. 11 case, and to my knowledge the NRA Board never saw them or reviewed them. In fact the North/Childress

letter (Ex. B above) notes that all details of Brewer's charges and the invoices themselves were withheld from the Board, which violates every accepted principle of business management.

c) Exhibit G to my affidavit, a compilation of financial data from the NRA's IRS Form 990 for the years 2013-2019, shows an enormous increase in the NRA's legal expenses beginning in 2018, from \$6,972,324 in 2017 to \$25,064,761 in 2018 and \$38,584,656 in 2019. Of these amounts, \$38,621,386 was paid to the Brewer firm alone in 2018 and 2019. To my knowledge the NRA Board never investigated these extraordinary legal fees and simply accepted Wayne LaPierre's assurances that they were necessary.

11. In addition to the breaches of duty alleged by the Attorney General I am extremely concerned about significant conflicts of interest the Brewer firm has in representing the NRA as an entity in this case. I am aware that the Brewer firm has previously represented both the NRA as a corporate entity and Wayne LaPierre individually in two recent cases involving allegations of fraud and breach of fiduciary duty similar to those in this action. I am not a lawyer, but I believe anyone can understand that if the Attorney General's claims are correct and Wayne LaPierre has misspent NRA money for his own benefit, then the NRA obviously has the right to recover all such funds from LaPierre. But in that case the Brewer firm would necessarily have to make a claim on behalf of the NRA against LaPierre, their former client, which would obviously be a conflict of interest.

12. The Attorney General's complaint alleges that Wayne LaPierre "effectively dominates and controls the Board of Directors as a whole." Based on my experience with the NRA and my review of Board minutes and other NRA documents I believe this allegation to be true and I believe this control continues to this very day. The NRA cannot be independent as a corporate entity in this case, and cannot have independent legal advice, because

a) its General Counsel John Frazer is an Individual Defendant in this action and therefore conflicted in advising the Board;

b) Wayne LaPierre continues to control the NRA that pays the Brewer firm's bills in this and all other cases in which the NRA is a party and in which LaPierre was also represented by Brewer, meaning the Brewer firm is conflicted as well in giving independent legal advice to the Board; and

c) the NRA Board itself continues to do nothing but acquiesce to LaPierre.

13. The Board's "special litigation committee" ("SLC") is just another rubber-stamp subset of the NRA Board that is subservient to Wayne LaPierre and the Brewer firm, and composed of NRA directors who as Board members are themselves alleged by the Attorney General to have breached their fiduciary oversight duties. The clearest evidence of this is that

a) despite the obvious conflicts of interest of Wayne LaPierre, John Frazer and the Brewer firm in this case from the beginning, the SLC never hired or consulted independent counsel;

b) the SLC approved the NRA's Ch. 11 bankruptcy filing in early January 2021 although it knew (or should have known) this was a violation of the NRA Bylaws (Article VI, Sec. 2) that specifically require Board approval for such a major action or "reorganization";

c) although the members of the SLC were present and voted at the Board's March 28, 2021 meeting there is no indication in the minutes that the SLC recommended independent legal advice, or for that matter, any other investigation of the Attorney General's allegations; and

d) that despite the serious concerns expressed by a neutral, objective senior federal bankruptcy judge (Hon. Harlin Hale) in his May, 11, 2021 order dismissing the Ch. 11 case, the

SLC has done nothing to investigate those concerns and the control of this case remains with Wayne LaPierre and the Brewer firm to this very day.

14. In May 2019 a director of the NRA, Lt. Col. Allen West (who has since resigned from the Board), wrote in his blog post that “There is a cabal of cronyism operating within the NRA and that exists within the Board of Directors. It must cease.” [<https://theoldschoolpatriot.com/statement-regarding-nra/>]. As Exhibit G to my affidavit shows, the NRA has been hemorrhaging money for at least 5 years while the NRA Board has done nothing about this and left Wayne LaPierre in charge. No corporate board that was properly fulfilling its fiduciary duties to the corporation and its members or shareholders would ever allow such a state of affairs to continue this long.

15. The Attorney General's complaint alleges that Brewer's legal bills were not properly audited, but makes no demand for any review of these charges or any recovery of any fees found to be unreasonable. Even a non-lawyer can understand that if Brewer's fees are determined to be excessive then Brewer firm is not going to sue itself to recover those fees for the NRA. In fact, as long as Wayne LaPierre controls the NRA and the present NRA Board refuses to act, it is apparent that Brewer's legal fees are not going to be reviewed at all.

16. I disagree and object most strongly with the Attorney General's proposed remedy of dissolution. Dissolving the NRA is not in the best interests of either the NRA as a corporate entity or its reported 5.5 million ordinary rank-and-file members who have supported the NRA and its mission. Neither the rank-and-file members nor the NRA as an entity should be penalized for the breaches of fiduciary duty that the Attorney General alleges were committed solely for the personal benefit of the Individual Defendants.

17. Dissolution would wrongfully divest the NRA's assets and organizational value from

its membership – whose dues and contributions built the NRA over nearly 150 years – and distribute those assets to some other persons or entities. This would destroy the ongoing safety, education, training, certification and associational benefits that the NRA now provides and will continue to provide to its membership and to the public.

18. For example, according to its website the NRA has certified more than 125,000 instructors, 8,000 coaches and 2,200 training counselors who provide competent instruction in the safe and proper use of firearms across the United States to millions of Americans. Other examples of ongoing member and public benefit programs on NRA's website include:

- Eddie Eagle GunSafe program. This is a gun-accident prevention program that helps parents, law enforcement, community groups and educators navigate this crucial children's safety topic. It teaches Pre-K through 4th graders what to do if they should ever find an unsecured firearm with friendly, age-appropriate lessons that have proven, real-world success, and has taught over 32 million children how to stay safe if they ever find a gun. This program also provides grant funding for schools, law enforcement agencies, hospitals, daycare centers and libraries interested in bringing Eddie Eagle to children in the area.
- Women on Target Instructional Shooting Clinics. This teaches firearm safety and the fundamentals of marksmanship in a supportive, woman-friendly environment. These instructional clinics are available only to women, to provide a safe and friendly venue to learn these critical skills from, and with, other women.
- School Shield. This is a school security program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy. Through this program the NRA seeks to engage communities and empower leaders to help make our schools more secure.
- Refuse To Be A Victim. This program teaches techniques to avoid dangerous situations and criminal confrontation. Seminars are held across the nation and are open to individuals of all ages. Thousands of federal, state and local law enforcement officials and civilians across the United States utilize this popular program in their crime prevention and community policing initiatives. More than 120,000 people have benefited from these seminars.
- Instruction and Certification. Approximately 1 million people attending NRA training courses annually. NRA approved training courses include gunsmithing schools as well as courses to become certified Instructors, Counselors, Coaches, and Range Safety Officers.

19. The Attorney General's attack on the NRA as an entity, and her demand for dissolution instead of limiting this action to claims for wrongful acts of the individual defendants, is a direct attack on the rights of all NRA members to freedom of association and of speech under the First Amendment of the U.S. Constitution and similar provisions of the New York State constitution.

20. Therefore I am requesting intervention in this action because it is evident to me that neither the Attorney General nor the Individual Defendants nor the NRA Board will protect the best interests of the NRA as an entity and its membership. In other words, no present party to this action will adequately represent and protect the interests of the NRA as an entity, or the interests of its rank-and-file members, because a) the Attorney General is seeking to destroy the NRA; b) the Individual Defendants are alleged to have put their own personal interests above those of the NRA and its members; c) the NRA as an entity has no independent ability to defend its interests because Defendants LaPierre and Frazer as well as the Brewer firm, control this litigation, and (d) the NRA Board will not act to fulfill its fiduciary oversight obligations.

21. For all these reasons I am filing through counsel a Motion to Intervene here in my capacity as a Director of the NRA, and as a member, as of right or alternatively by permission.




ROSCOE B. MARSHALL, JR.

STATE OF TEXAS
KENDALL COUNTY

The foregoing affidavit was sworn to and subscribed before me by ROSCOE B.

MARSHALL, JR. on this 20 day of September, 2021.


Notary Public

My Commission Expires:

