

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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.

Index No. 451625/2020  
Hon. Joel M. Cohen

**THE ATTORNEY GENERAL'S MEMORANDUM OF LAW  
IN PARTIAL OPPOSITION TO THE MOTION TO INTERVENE  
BY ROSCOE B. MARSHALL, JR.**

LETITIA JAMES  
Attorney General of the  
State of New York  
28 Liberty St.  
New York, NY 10005

Stephen C. Thompson  
*Assistant Attorney General*

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Plaintiff New York Attorney General Letitia James (“Attorney General”) respectfully submits this memorandum of law in partial opposition to the motion to intervene by National Rifle Association (“NRA”) Director Roscoe B. Marshall, Jr. NYSCEF 376-390, 396-97.

### PRELIMINARY STATEMENT

The Attorney General takes no position as to whether Mr. Marshall may intervene in this action to assert crossclaims and third-party claims raised in his proposed answer and counterclaims, [NYSCEF 378](#). The Attorney General submits this partial opposition to address arguments made by Mr. Marshall to intervene and interpose defenses and counterclaims against the Attorney General.

*First*, Mr. Marshall lacks standing to assert claims on behalf of the NRA against the Attorney General. [Not-for-Profit Corporation Law \(“N-PCL”\) § 720\(b\)](#) provides directors with standing to assert derivative claims on behalf of not-for-profits for specifically enumerated purposes, none of which allow directors to sue the Attorney General for alleged constitutional violations on behalf of a not-for-profit, or to defend against the Attorney General’s claims for dissolution pursuant to Chapter 11 of the N-PCL.

*Second*, with respect to any alleged claims Mr. Marshall has in his individual capacity against the Attorney General, Mr. Marshall does not meet the standard for intervention pursuant to Civil Practice Law and Rules (“CPLR”) [1012](#) or [1013](#) for all of the reasons already held by this Court in connection with the previous intervenors’ motion. [NYSCEF 395](#) at 44:2-58:20. Mr. Marshall does not have a property interest in the NRA’s assets, and Mr. Marshall has failed to allege how he is being inadequately represented by the NRA with respect to any constitutional claim he may have.

**ARGUMENT****I. Mr. Marshall lacks standing to assert claims or defenses against the Attorney General on behalf of the NRA**

Mr. Marshall asserts that he has the authority to pursue derivative claims on behalf of the NRA pursuant to N-PCL § 720. NYSCEF 377 at 9.<sup>1</sup> That statute provides directors with standing to bring derivative claims that are specifically enumerated, such as to set aside an unlawful conveyance or for breaches of fiduciary duty. N-PCL § 720(a)(1). It does not provide standing to directors to pursue constitutional claims against the Attorney General, or to defend against regulatory enforcement actions brought by the Attorney General. Thus, Mr. Marshall lacks derivative standing to pursue the defenses and counterclaims in his proposed pleading against the Attorney General. NYSCEF 378 at 19 (affirmative defenses), 25-31 (counterclaims).

**II. Mr. Marshall does not meet the requirements for intervention under CPLR 1012 or 1013 with respect to any claims he alleges to have in his individual capacity**

In addition to his proposed derivative claims, Mr. Marshall also seeks to intervene to assert claims in his individual capacity pursuant to CPLR § 1012(a)(2) and (3), as well as CPLR § 1013. Mr. Marshall's arguments for intervention are identical to, and fail for the same reasons as, the NRA members' motion to intervene that was denied by the Court. NYSCEF 395. The Attorney General incorporates by reference the arguments she made against intervention in connection with the previous motion to intervene, NYSCEF 290, as well as the Court's order denying intervention. NYSCEF 395 at 44:2-58:20.

**A. Mr. Marshall does not have a property interest in the assets of the NRA**

CPLR 1012(a)(3) provides for intervention as of right "when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the

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<sup>1</sup> References to page numbers in e-filed documents refer to the page number created by NYSCEF.

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person may be affected adversely by the judgment.” As this Court held with respect to the previous motion to intervene, members, directors, and officers of not-for-profit corporations do not have a property interest in the assets of the corporation. NYSCEF 395 at 55:14-56:5 (citing N-PCL § 102(a)(5)). Thus, Mr. Marshall has no property interest in the assets of the NRA and cannot intervene on that basis under CPLR 1012(a)(3).

**B. Mr. Marshall has failed to allege how he is being inadequately represented by the NRA with respect to his proposed counterclaims**

CPLR 1012(a)(2) provides for intervention as of right “when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” Mr. Marshall has not identified what interest he has against the Attorney General that is implicated by this action, or in what way he will be bound. To the extent Mr. Marshall is arguing that he has any constitutional interests implicated by this action, that interest—which is equivalent to an interest against the Attorney General’s claims for dissolution of the NRA—“can be litigated by the NRA itself.” NYSCEF 395 at 53:4-11. Mr. Marshall neither has an interest against the Attorney General, nor has he alleged how any such interests are being inadequately represented here by the NRA.

**C. Mr. Marshall should not be permitted to intervene under CPLR 1013**

All of the concerns expressed by the Court with respect to the undue delay that would result from permitting intervention by NRA members apply to Mr. Marshall, who is but one member of a seventy-six-member board of directors. As was true in connection with the previous motion to intervene, “[i]t does not take a lot of imagination to think that if [Mr. Marshall] were permitted to join the case, other groups of intervenors with a different take on the situation would come to [the Court] and ask the same, and . . . this could spiral out of control with all sorts of duplication and different points of view.” NYSCEF 395 at 57:1-8. Mr. Marshall should not be permitted to

intervene in this regulatory enforcement action.

### CONCLUSION

For the foregoing reasons, Mr. Marshall's arguments concerning his alleged right to intervene to pursue defenses and counterclaims against the Attorney General pursuant to CPLR 1012(a)(2) or (a)(3), and for permissive intervention pursuant to CPLR 1013, are meritless.

Dated: October 15, 2021  
New York, New York

LETITIA JAMES  
*Attorney General  
of the State of New York*

*/s Stephen C. Thompson*

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**Attorney Certification Pursuant to Commercial Division Rule 17**

I, Stephen Thompson, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Memorandum of Law in Partial Opposition to the Motion to Intervene by Roscoe B. Marshall, Jr. complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 983 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: October 15, 2021  
New York, New York

*/s Stephen C. Thompson*

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Stephen Thompson