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February 22, 2022

VIA NYSCEF

Honorable Joel M. Cohen
Justice of the Supreme Court of the State of New York State
Commercial Division, New York County
60 Centre Street
New York, NY 10007

Re: *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Inc. et al.*, Index No. 451625/2020

Dear Justice Cohen:

On behalf of the Plaintiff, the People of the State of New York, the Office of the Attorney General of the State of New York ("OAG") respectfully submits this letter to proffer the decision, attached at Exhibit A, in *The People of the State of New York, by Letitia James, Attorney General of the State of New York v. The Trump Organization, Inc. et al.*, Index No. 451685/2020, filed on February 17, 2022 (Engoron, J), as supplemental authority in further support of the OAG's motion to dismiss the amended counterclaims by defendant The National Rifle Association of America ("NRA"). See NYSCEF Motion Sequence No. 13, Dkt. Nos. 264-279; 288; 437, 513. 528, 543, 560-563. The motion is scheduled for argument on Friday, February 25, 2022, at 11:00 a.m.

Justice Engoron denied a motion by the defendants to quash subpoenas issued by the OAG or to stay an OAG investigation. In so holding, the Court rejected arguments like those advanced by the NRA, specifically that public statements by the Attorney General supported blocking the OAG's investigation as unconstitutional or improperly motivated. See Ex. A, Decision at 4-5 (in reliance on *United States v. Kordel*, 397 U.S. 1 (1970), the defendants claim that the Attorney General's statements "demonstrate that OAG is acting with the "impropriety"). The Court held there was no basis for questioning the legality of the OAG's investigation. The Court found sufficient objective evidence that the OAG investigation was based on fact and law, not animus. *Id.* at 5-8. Further, the Court held: "Attorney General James, just like [the defendant], was not deprived of her First Amendment rights to free speech when she was a politician running for a public office with investigatory powers." *Id.* at 5.

At the December 10, 2021 status conference in this action, this Court raised similar questions about the legal relevance of the Attorney General's campaign statements about the NRA. This Court stated:

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The question is when will [the Attorney General's] statements be, in any way, a deciding factor. Either the claim has merit, in which case, whatever statements were made before she was Attorney General – it's hard to understand why that would change the result. In other words, otherwise, if those statements had never been made and those views had never been held, the Attorney General's office, the State of New York, would win. It's unclear to me why statements in advance would change that result.

See NYSCEF Dkt. No. 511, Transcript of Status Conference at 30.

The OAG respectfully submits that Justice Engoron's recent decision further supports dismissal of the NRA's counterclaim.

Respectfully,
/s Emily Stern

Emily Stern
Assistant Attorney General
Co-Chief, Charities, Enforcement

Attachment

cc: All Counsel of Record