

EXHIBIT 5



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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March 18, 2022

BY EMAIL

Hon. O. Peter Sherwood, Special Master
360 Lexington Avenue
New York, NY 10017
psherwood@anfershore.com

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 Sherwood:

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 requesting that the National Rifle Association (“NRA”) be compelled to produce documents responsive to a nonparty subpoena served on Aronson, LLC (“Aronson”) that the NRA has inappropriately withheld as privileged or, alternatively, that the documents be submitted to Your Honor for *in camera* review.¹

RELEVANT FACTS

The NRA, as a regulated charity that solicits contributions in New York, is required to file with the OAG an annual financial audit and a copy of its annual IRS Information Return, the Form 990. Aronson is the NRA’s current independent auditor responsible for the NRA’s annual financial audit, and it has also assisted with the preparation of the NRA’s Form 990 tax filing for

¹ The OAG is taking the deposition of Aronson, by audit partner Greg Plotts, on March 22, 2022. This deposition has been adjourned several times for the resolution of other document issues. We plan to proceed with the deposition on March 22, 2022, and reserve the right to keep the deposition open based on the resolution of the issues described herein.

fiscal years 2019 and 2020. The OAG served Aronson with a nonparty subpoena for documents, dated June 21, 2021.²

The NRA, and its affiliate, the NRA Foundation (“NRAF”), which is also a client of Aronson, insisted that both organizations be given the opportunity to review responsive documents before production to the OAG to assert any potential privileges and to redact donor/member identifying information. Aronson agreed to that process, and has repeatedly represented that any documents that Aronson has withheld from its production on the grounds of privilege were withheld at the direction of the NRA and/or the NRAF. On February 7, 2022, the OAG, Aronson and the NRA held a meet and confer regarding the NRA’s assertion of privilege over hundreds of Aronson documents, during which the NRA agreed to withdraw its privilege assertions over most of the withheld documents. On February 24, 2022, the NRA provided a categorical privilege log for the now smaller set of documents it directed Aronson to withhold.³ In the log, the NRA asserted privilege over sixty-five (65) documents on the basis of (1) attorney-client privilege, (2) attorney work product, and (3) trial preparation materials. The log was served without the certification for categorical privilege logs required by Rule 11-b of the Commercial Division Rules (“11-b Certification”).

On March 8, 2022, the NRA provided the OAG with the required 11-b Certification, along with what appears to be a revised categorical log asserting privilege over fifty-six (56) documents across four categories on the basis of (1) attorney-client privilege, (2) attorney work product, (3) trial preparation materials, and (4) common interest.⁴ The 11-b Certification and revised privilege log are attached as Exhibits A and B to this letter.

The OAG wrote to ask the NRA for information supporting the assertion of privilege, including on February 25, 2022, and met with the NRA to try to resolve the issues relating to the privilege log, including on March 3, 2022. The OAG specifically asked the NRA to explain how information conveyed to an independent nonparty would be privileged, particularly under the specific circumstances present here. The parties were not able to resolve the disputes relating to the NRA’s amended privilege log. As set forth below, in light of the NRA’s failure to meet its burden, Plaintiff asks that it be compelled to produce the documents listed in its categorical privilege log.

ARGUMENT

“The burden of establishing any right to protection [of documents] is on the party asserting it, and the protection claimed must be narrowly construed.” *Brooklyn Union Gas Co. v. American Home Assur. Co.*, 23 A.D.3d 190, 191 (1st Dep’t 2005). The NRA has failed to

² The OAG also served a second subpoena for certain documents to the extent not previously produced and for testimony dated December 1, 2021, and amended on January 10, 2022.

³ The OAG has repeatedly objected to the scope and time taken by the NRA’s and NRAF’s review of Aronson’s documents. The OAG reserves all rights with respect to that process, but in the interests of efficiency, limits this submission to documents currently being withheld from the Aronson production on the basis of privilege.

⁴ Plaintiff hereby also demands production of the nine (9) documents that were previously being withheld as privileged and are now apparently no longer considered privileged.

establish that it is entitled to withhold the categories of Aronson documents identified on the privilege log on account of any of the four privileges it asserts.

First, the NRA has waived any claim of attorney-client privilege it had over communications that were shared with nonparty Aronson. Second, the NRA has failed to establish that the withheld information is entitled to the immunity from disclosure given to attorney work product. Third, the NRA has failed to establish that the materials provided to Aronson are trial preparation materials, and in any event the OAG is entitled to disclosure of any such materials provided to Aronson. Finally, the NRA has failed to establish that it had a common interest with Aronson during the NRA's failed attempt to file for bankruptcy in the United States Bankruptcy Court for the Northern District of Texas.

NRA Communications with Aronson Are Not Protected By The Attorney-Client Privilege

The NRA has not established that it is entitled to attorney-client privilege for any communications shared with nonparty Aronson.

It is axiomatic that "[t]he party asserting the privilege bears the burden of establishing its entitlement to protection by showing that the communication at issue was between an attorney and a client for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship, that the communication is predominantly of a legal character, that the communication was confidential and that the privilege was not waived." *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 N.Y.3d 616, 624 (2016) (internal quotation marks omitted). It is narrowly construed. *Id.* "Generally, communications made in the presence of third parties, whose presence is known to the [client], are not privileged from disclosure because they are not deemed confidential. Similarly, a client waives the privilege if a communication is made in confidence but subsequently revealed to a third party." *Id.* (internal quotation marks and citations omitted).

A limited exception to waiver of attorney-client privilege exists "where the presence of [a] third part[y] is deemed necessary to enable the attorney-client communication and the client has a reasonable expectation of confidentiality." *Ambac Assur. Corp.*, 27 N.Y.3d at 624. This exception, which is drawn from *United States v. Kovel*, 296 F.2d 918 (1961), is inapplicable here. Where, as here, what the NRA sought from Aronson "is not legal advice but only accounting service, ... or if the advice sought is the accountant's rather than the lawyer's, no privilege exists." *Id.* at 922. It is undisputed that Aronson was not retained by the NRA's counsel, but directly by the NRA to perform its annual independent audit and assist in the preparation of its Form 990. NRA counsel has not demonstrated how Aronson is necessary to NRA counsel's provision of legal services and, accordingly, the *Kovel* exception cannot apply here. *See People v. Trump*, No. 451685/2020, NYSCEF Doc. No. 302 (Sup. Ct. N.Y. Cnty. Dec. 15, 2020) (holding that communications with outside auditor were not "necessary to [law firm's] provision of legal services," and thus no privilege attached to the communications) (attached as Exhibit C to this letter).

A review of the documents not withheld as privileged demonstrates that the assertion of privilege here is baseless. As is evident from Aronson's production, the NRA did not treat

Aronson as an advisor to its counsel. Aronson was not engaged by the NRA, or by Brewer, to assist Brewer in its legal assistance to the NRA. The NRA and its counsel consistently withheld information from Aronson on privilege grounds precisely because they did not consider communications with Aronson to be covered by the attorney-client privilege. Aronson professionals also believed there was no privilege with the NRA. (See Oct. 8, 2020 instant message exchange, attached as Exhibit D, in which Kathy Cuddapah, the tax partner, writes to her colleagues regarding a potential disclosure in the 990: “When in doubt, disclose it. *And we don’t have client privilege.*” Aronson_NRA0059698. *Emphasis added.*) As such, there was no reasonable expectation of confidentiality with respect to the information that was provided. See *Ross v. UKI Ltd.*, No. 02-cv-9297, 2003 WL 22319573, at *2 (S.D.N.Y. Oct. 9, 2003).

There are multiple examples of the NRA and Brewer withholding information from Aronson on privilege grounds. For example, Aronson’s audit workpapers document that in meetings with the Brewer firm, Brewer attorneys did not answer certain questions posed by Aronson because of privilege:

Meeting with Bill Brewer and Sara Rodgers, external council for NRA with Brewer Law Firm, on October 8, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue from Aronson and Craig Spray from the NRA)

- Bill and Sara discussions were limited by attorney client privilege, therefore any discussions outside of official legal matters with the update on lawsuits were not answered. NY AG Lawsuit was discussed and how it was originally improperly assigned outside of commercial track and the appointed judge originally overseeing it was an elected official. With the NRA action it was removed from this lower court and reassigned to Commercial track (where larger suits against organizations are held and less threat of political bias). October 19th the NRA will be filing to dismiss lawsuit – this decision will take 30-60 days.

....

- There were a few questions asked by Aronson on specific procedures, investigations, 990 review that the Brewer firm may have done or will be doing, and Bill made it clear that he could not respond to any of these questions under attorney client privilege.

(Excerpt from Aronson_NRA0046027: Engagement Acceptance and Continuance Form, updated through June 10, 2021) (attached as Exhibit E to this letter).

When Aronson requested a copy of a forensic analysis purportedly used to substantiate amounts reported in the Form 990, John Frazer, the NRA’s general counsel, did not provide the analysis on privilege grounds.⁵ (Aronson_NRA0063318, attached as Exhibit F, an email dated February 20, 2020, Frazer writes to Aronson partner Greg Plotts: “Greg, I understand from Sonya that you’re referring to Forensic Risk Alliance’s analysis of Josh Powell’s expenses. The firm was engaged on a privileged basis, but the key findings were incorporated into the attached letter that was sent to Mr. Powell’s attorney.”) Mr. Frazer withheld from Aronson the requested document because of privilege but provided the referenced attachment – a letter sent to opposing counsel. The NRA is now withholding both the full analysis and the shared letter as privileged. There is no basis for the NRA to withhold the latter as privileged given its prior disclosure.

⁵ Upon information and belief, the NRA has not provided the forensic examination referenced in the email. Plaintiff demands production of the same to the extent Plaintiffs intend to rely on the forensic examination in their defense.

As another example, the NRA has directed Aronson to withhold an audit workpaper that analyzes transfers to the Brewer firm (the “SP 250 Analysis”). It is beyond dispute that Aronson completed the SP 250 Analysis not at Brewer’s direction, nor at the direction of the NRA for litigation purposes. Rather, SP 250 was part of a series of audit “special procedures” that Aronson conducted as part of its 2020 audit in an effort to follow appropriate audit procedures in response to high-risk events (Ex. E at 46034). These procedures were conducted for auditing purposes, not as part of a legal consultation – a critical distinction in the auditing process.⁶ Notably, Aronson has produced all the other workpapers relating to these special procedures, but has withheld, at the direction of the Brewer firm, the one workpaper relating to Brewer.

Additionally, in connection with Category 4 of the March 8, 2022 categorical log, the NRA states that it has withheld “factual information” that was “gathered . . . under and pursuant to counsel’s direction.” Exhibit B at ¶ 33. But the attorney-client privilege “is of course limited to communications—not underlying facts.” *Spectrum Sys. Int’l Corp. v. Chem. Bank*, 78 N.Y.2d 371, 377 (1991). The NRA cannot withhold factual information simply because it was gathered at the request of counsel.

Finally, to the extent that the NRA intends to rely on an advice of counsel defense in arguing that certain disclosures in the IRS Form 990 were proper, any such communications involving counsel should be produced. *Vill. Bd. of Vill. of Pleasantville v. Rattner*, 130 A.D.2d 654, 655 (2d Dep’t 1987) (“Where a party asserts as an affirmative defense the reliance upon the advice of counsel, the party waives the attorney-client privilege with respect to all communications to or from counsel concerning the transactions for which counsel’s advice was sought.”). At the March 3, 2022 meet and confer, the OAG asked the NRA whether it intended to rely upon the advice of counsel defense. The NRA refused to respond, indicating that the OAG would have to review the NRA’s answer when served. On Monday, March 14, the date the NRA’s answer was due, the OAG consented to the NRA’s request for an extension but asked the NRA to confirm whether it would be asserting this defense. The NRA said that it would confirm the same. It has not yet.

In light of the foregoing, the NRA has failed to carry its burden to establish that any attorney client privilege applies here.

Aronson’s Documents are Not Attorney Work Product

The NRA has also not demonstrated that it is entitled to the narrow protection for attorney work product provided by CPLR 3101(c). “[A]ttorney work product applies only to documents prepared by counsel acting as such, and to materials uniquely the product of a lawyer’s learning and professional skills, such as those reflecting an attorney’s legal research, analysis, conclusions, legal theory or strategy.” *Brooklyn Union Gas Co. v. American Home Assur. Co.*, 23 A.D.3d 190, 190-91 (1st Dep’t 2005) (holding that “[d]ocuments prepared in the ordinary course of an insurance company’s investigation . . . are not privileged,” and “do not become privileged merely because an investigation was conducted by an attorney”) (internal quotation marks omitted).

⁶ See, e.g. <https://www.cpajournal.com/2017/07/18/distinguishing-agreed-upon-procedures-consulting-engagements-reports/> (discussing the difference between attest services and consultation services.)

The NRA's log contains a conclusory assertion that documents withheld would "reveal[] attorney work product." This is insufficient to meet the NRA's burden, or to demonstrate that the documents withheld were prepared by counsel and contain only counsel's mental processes rather than created in the ordinary course of Aronson's independent audit of the NRA or the NRA's annual tax filing. As discussed above, a review of Aronson's production reveals that certain documents withheld on privilege grounds were created by Aronson in the course of its independent audit. Further, the NRA has not shown that the disclosure of such information to Aronson did not waive the privilege. As such, the documents must be produced. In connection with one category of withheld documents, the NRA states that it instructed Aronson to withhold certain letters that merely "*can be said* to reflect mental impressions and trial preparation strategy of the attorneys." *Id.* at n.2.

The NRA has failed to provide information establishing that the documents withheld fall within the work product privilege.

Aronson's Documents are Not Insulated from Disclosure as Trial Preparation Materials

The NRA has not demonstrated that it is entitled to extend to Aronson's documents the protection afforded materials "prepared in anticipation of litigation or for trial" pursuant to CPLR 3101(d)(2). Even if it had, which it did not, the OAG has "substantial need of the materials" as there are no other means of discovering what information the NRA supplied to Aronson, and this information is relevant to the OAG's claims that Defendant NRA made false filings (*see* Am. and Supp'l Cplt.) and the individual Defendants breached their fiduciary duties to the NRA. *See id.*

It is only "material prepared for litigation" that warrants the qualified privilege found in CPLR 3101(d)(2). *Hoffman v. Ro-San Manor*, 73 A.D.2d 207, 211 (1st Dep't 1980) (holding that a list of names and addresses of witnesses was not "material prepared for litigation"). "[W]hen an item has been secured or prepared with the mixed motivation of both internal business purposes as well as potential litigation, the item does not partake of CPLR 3101(d) immunity and, therefore, is disclosable." *Pinn v. Supermarkets General Corp.*, 104 Misc.2d 1112, 1115 (Dist. Ct. Nassau Cnty. 1980) (citing *Kandel v. Tocher*, 22 A.D.2d 513 (1st Dep't 1965)).

The NRA has not established how documents provided to its outside auditor during the course of annual audit or preparation of a mandatory tax filing were prepared solely in anticipation of any litigation, and not for the "mixed motivation" of proceeding with an annual audit and/or submission of the Form 990. In fact, the NRA has identified in its log that it has withheld drafts of the NRA's tax filings, which were, of course, at the very least prepared with the mixed motive of filing tax returns. *See* Ex. A at n.1. Even if the documents were prepared in anticipation of litigation, the Plaintiff has no other source for the information that was provided to Aronson and upon which Aronson relied in preparing its audit and the 990s than Aronson and the NRA.

Common Interest

The NRA's new assertion that it had a "common interest" with its outside auditor directly contradicts the requirement that Aronson retain independence from its client. "[A]s has become crystal clear in the face of the many accounting scandals that have arisen as of late, in order for auditors to properly do their job, they *must not* share common interests with the company they audit." *Medinol, Ltd. v. Bos. Sci. Corp.*, 214 F.R.D. 113, 116 (S.D.N.Y. 2002) (emphasis in original). In any event, the common interest exception to privilege waiver in New York applies only where two parties "reasonably anticipate litigation in which they share a common legal interest," and not to "clients who share a common legal interest in a commercial transaction or other common problem but do not reasonably anticipate litigation." *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 N.Y.3d 616, 628 (2016). The fact that Aronson had an interest in being paid by the NRA during the course of the NRA's failed bankruptcy in Texas is not a sufficient common legal interest to render their communications privileged.

Conclusion

In light of the foregoing, it is respectfully submitted that the NRA has failed to meet its burden to demonstrate that the Aronson documents listed in its categorical log are privileged and shielded from discovery. Plaintiff asks for an order compelling their immediate production and for such other and further relief as is proper.

Sincerely,

/s/ Yael Fuchs

Assistant Attorney General

cc: All Counsel of Record

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, WAYNE LAPIERRE, WILSON
PHILLIPS, JOHN FRAZER, and JOSHUA
POWELL,

Defendants.

INDEX NO.: 451625/2020

Hon. Joel M. Cohen

COMMERCIAL DIVISION RULE 11-b CERTIFICATION

1. I am a partner with the law firm Brewer, Attorneys & Counselors, counsel for the National Rifle Association of America (“NRA”) in the above-captioned action.
2. I provide this certification pursuant to Rule 11-b of the Commercial Division Rules.
3. I understand that, on June 21, 2021, Letitia James, Attorney General of the State of New York (“NYAG”) issued a subpoena duces tecum (the “Subpoena”) to Aronson LLC (“Aronson”).
4. I understand that, in response to the Subpoena, Aronson produced to the NYAG over 18,000 documents.
5. However, there are a handful of documents – listed on the NRA's categorical log for Aronson’s documents – that reveal privileged information belonging to the NRA and/or its counsel. Therefore, the NRA instructed Aronson to withhold such documents from production.
6. As explained in more detail below, the communications that have been withheld are privileged and, pursuant to CPLR 3101(b) and other applicable law, nondiscoverable. In addition,

as discussed in detail below, the invoked privileges have not been waived by virtue of these records/communications having been shared with Aronson.

7. I personally reviewed each document withheld for privilege. No sampling was used in the preparation of the categorical privilege log.

**I.
CATEGORY 1**

8. As noted in the log, documents in Category 1 are:

Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys, client, and/or Aronson as adviser (1) providing legal advice; and/or (2) providing or requesting information to inform such advice predominantly but not necessarily exclusively in connection with the preparation of the NRA's regulatory/tax filings. Information shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.¹

9. Category 1 documents are privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2).

A. Attorney-Client Privilege

10. Under CPLR § 4503(a), "evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment . . . shall not [be] disclose[d], . . . nor shall the client be compelled to disclose such communication, in any action."

11. Documents in Category 1 are protected from disclosure on, among other things, attorney-client privilege grounds because they contain (i) legal advice to the NRA (Craig Spray,

¹ Category 1 documents include but are not limited to the following communications: 1) email threads involving the NRA and its counsel informing legal advice on tax issues, and/or seeking information from tax advisers to inform such advice to enable Aronson's preparation of the NRA's Form 990 and other regulatory tax filings; and 2) NRA draft tax filings and related schedules and attachments.

Sonya Rowling, John Frazer, and other representatives of the NRA involved in the preparation of the returns) by various counsel, including, without limitation, John Frazer, Don Lan, Brewer, Attorneys & Counselors, and Troutman Sanders (ERISA counsel for the NRA) in connection with various tax and information returns, including predominantly the NRA's form(s) 990; (ii) confidential communications soliciting, informing, and/or providing such advice. For example, they contain legal advice regarding IRS reporting requirements and the NRA's legal obligations with regard to the particular return and reveal the results of factual investigations conducted to inform the substance of legal advice and the substance of confidential attorney-client communications. Although the presence or absence of such a label is not dispositive, it is notable that some of the documents in Category 1 are expressly labeled "Privileged & Confidential." Documents in category 1 also include draft forms 990 or portions thereof and were included in the Category because, when compared to the final filed version, may reveal the substance of privileged communications and advice. No comparison was conducted because the drafts either differ from the final return (in which case they likely reveal privileged information) or are consistent with the substance of the ultimate return (in which case the NYAG already has them).

12. The above-described communications either included or were subsequently forwarded to Aronson to advance the joint endeavor—by lawyers and tax professionals—of assisting the NRA with complying with its information and tax return obligations. Some of the communications expressly make clear that attorneys require input from the tax professionals to formulate informed and effective legal advice. The necessity for involving Aronson in the communications in other documents can be fairly and reasonably inferred based on the time sensitivity of the endeavor, team work against a filing deadline, and the substantial size of the project that required all-hands-on-deck.

13. When a third party, such as a tax return preparer, is included in a privileged communication, there is no waiver as long as, as here, (i) the client (here, the NRA) had a reasonable expectation of confidentiality under the circumstances, and (ii) the disclosure to the third party (here, Aronson) was necessary to obtain legal advice. *See Ross v. UKI Ltd.*, 2003 WL 22319573 *3 (S.D.N.Y. 2003) (applying New York law).

14. The communications included in Category 1 occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain information shared with Aronson confidential and with the reasonable understanding on the part of the NRA that materials would indeed be kept confidential. In fact, this undertaking is memorialized in Aronson's engagement agreement with the NRA and the NRA understands that Aronson complied with that obligation and safeguarded the information.

15. Further, witnesses will testify that they understood and believed that these communications--involving lawyers and tax advisors--were legally privileged and Aronson was included in the communications to enable the NRA to obtain informed and efficient legal advice in connection with the NRA's preparation of its Form 990 and other regulatory filings.

B. Attorney Work Product Privilege

16. CPLR 3101(c) protects from discovery "the work product of an attorney." Under CPLR 3101(c), the "work product of an attorney shall not be obtainable," i.e., the privilege is absolute.

17. As noted above, communications in Category 1 contain work product of various attorneys, including John Frazer, Don Lan, various attorneys at Brewer, Attorneys & Counselors, and an attorney at Troutman Sanders.

18. Furthermore, sharing attorney work-product with a third party (here, Aronson) results in waiver only when there is a likelihood, based on the disclosure, that the material will be revealed

to a litigation adversary under conditions that are inconsistent with the desire to maintain confidentiality. *See Bluebird Partners, L.P. v. First Fidelity Bank, N.A., New Jersey*, 248 A.D.2d 219, 671 N.Y.S.2d 7 (1st Dep't 1998); *Scott v. Beth Israel Medical Center Inc.*, 17 Misc. 3d 934, 847 N.Y.S.2d 436 (Sup 2007); *Matter of Will of Pretino*, 150 Misc. 2d 371, 567 N.Y.S.2d 1009 (Sur. Ct. 1991); *Gramm v. Horsehead Indus., Inc.*, No. 87 Civ. 5122, 1990 U.S. Dist. LEXIS 773 (S.D.N.Y. Jan. 25, 1990).

19. The inclusion of Aronson in the communications within Category 1 did not waive the attorney work product privilege. The communications were not shared in a manner that would make it more likely for a litigation adversary of the NRA to acquire the attorneys' work product. In fact, the communications occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain materials confidential and with the reasonable understanding on the part of the NRA that materials would be kept confidential.

C. Trial Preparation Privilege

20. Under CPLR 3101(d)(2), "materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney . . .), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Even where such need and hardship are established, "[i]n ordering discovery of the materials," "the court shall protect against disclosure . . . the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation."

21. Here, many aspects of the advice and communications within Category 1 concern this and other litigation, including without limitation arbitration with C. Cox, and reflect the mental

impressions, conclusions, and opinions of the NRA's attorneys listed above and at times Aronson. For example, many of the communications concern disclosure of matters directly at issue in this litigation, such as analyses of various potential excess benefits (including but not limited to charter or first class flights), discussion of alleged misuse and subsequent return of NRA funds by an employee, accurate regulatory disclosure, and ongoing investigation to ensure compliance.

22. The privilege governing trial preparation materials “is waived upon disclosure to a third party where there is a likelihood that the material will be revealed to an adversary, under conditions that are inconsistent with a desire to maintain confidentiality.” *People v. Kozlowski*, 11 N.Y.3d 223, 246 (2008). For the reasons discussed in Paragraph 19 above, there was no waiver here.

II. CATEGORY 2

23. Category 2 documents are:

Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys and client (1) providing legal advice; and/or (2) providing or requesting information to inform such advice predominantly but not necessarily exclusively in connection with the audit of the NRA's financial statements. Shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.²

24. The communications in this category are separate from Category 1 because they do not on their face appear to relate to the preparation of tax or information returns and instead predominantly involved or were shared with Aronson in its capacity as the NRA's outside auditor.

² Category 2 documents include but are not limited to the following communications: 1)) email threads involving the NRA and its counsel informing legal advice on audit issues, and/or seeking information from advisers to inform such advice to enable Aronson's audit of the NRA's consolidated financial statements; 2) draft court filings in connection with a motion filed in the NRA's bankruptcy hearing, where relief was sought on behalf of the debtors for the benefit of Aronson; and 3) letters summarizing the status of pending, and where applicable, contemplated litigation, although the NRA has not instructed Aronson to withhold or redact most such letters, there are a handful of such letters where counsel's recitations of the status of the facts, and particular posture of the case can be said to reflect mental impressions and trial preparation strategy of the attorneys.

These documents contain and reveal legal advice of NRA counsel, including Sarah Gervase and Brewer, Attorneys & Counselors, with regard to various legal matters, including without limitation potential litigation concerning an apparently contested bequest and disclosure in financial statements.

25. Category 2 documents are therefore privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2). These documents reveal the substance of confidential attorney-client communications, the substance of attorneys' work product, and mental impressions and legal theories of counsel related to potential or pending litigation.

26. The inclusion of Aronson in the communications in the Category 2 documents did not waive the attorney work product or trial preparation privileges. The communications were not shared in a manner that would make it more likely for the adversary to acquire them. In fact, the communications occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain materials confidential and with the reasonable understanding that materials would be kept confidential, as clearly set forth in Aronson's engagement agreement with the NRA.

27. Moreover, the attorney-client privilege pertaining to the communications was not waived to the extent input from the auditor was required to secure effective legal advice.

III. **CATEGORY 3**

28. Category 3 consists of one document:

Outside counsel's billing statement revealing substance of confidential attorney-client communications, attorney work product, and trial preparation materials concerning active and pending legal matters, shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.³

³ The Category 3 document is a billing statement from the NRA's outside counsel revealing privilege materials that concern active and pending legal matters.

29. The document in Category 3 is privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2).

30. The document is a January 2020 invoice from Brewer, Attorneys & Counselors for services performed in December 2019 on legal matters, including those related directly to the NYAG's then-ongoing investigation of the NRA, which was a precursor to this litigation. The invoice contains detailed time entries of attorneys and other professionals at Brewer for the month of December 2019 and therefore reveals the substance of confidential attorney-client communications, attorney work product (including in connection with the NRA's efforts to comply with and discharge its data preservation and production obligations), and mental impressions and core strategies of counsel formulated in connection with the investigation and in contemplation of this action.

31. For the reasons discussed above with regard to categories 1 and 2, the fact that the invoice was shared with Aronson does not constitute waiver of any of the privileges. The NRA had a reasonable expectation that Aronson would keep the information included in the invoice confidential and that the disclosure of the document with Aronson did not make disclosure to this or any other litigation adversary more likely.

IV. **CATEGORY 4**

32. Category 4 documents withheld on the basis of privilege include:

Materials gathered at the request of the NRA's bankruptcy counsel in support of the NRA's contemplated application to the Bankruptcy Court for permission to pay Aronson in the ordinary course of business.

33. After the NRA filed its chapter 11 petition, it sought permission from the Bankruptcy Court to use debtors' property to make payments to various ordinary-course professionals, including

Aronson. When Debtors' counsel (the Neligan law firm) began to draft the application, they asked individuals at the NRA, including Rick Tedrick and Sonya Rowling, to gather certain factual information to be considered and/or included in furtherance of the application. The NRA employees gathered the information under and pursuant to counsel's direction, and communications in Category 4 evidence and reveal the results of that work. Because it was gathered at the direction of counsel in contemplation of an application to the bankruptcy court, the compiled materials and communications about them constitute attorney work product and trial preparation material. They also reveal indirectly the substance of confidential attorney-client communications.

34. Category 4 documents are therefore privileged under CPLR 4503, CPLR 3101(c), and CPLR 3101(d)(2).

35. Furthermore, Aronson had a common interest with the NRA with regard to the application because any payments to Aronson while the NRA's chapter 11 case was pending were dependent on (a) the NRA submitting the application; and (b) the bankruptcy court approving it. As a result, and for the legal reasons set forth above, there was no waiver of any of the privileges by virtue of these communications being shared with Aronson.

36. In any event, sharing these communications with Aronson, who the NRA knew would maintain the work product and trial preparation materials confidential, did not make it more likely that the information would become known to a litigation adversary. For that reason, even in the absence of a common interest, the privileges over the records were at all times preserved.

37. The NRA reserves the right to amend the attached Categorical Privilege Log pertaining to Aronson's production in response to the Subpoena. Similarly, I reserve the right to supplement this certification as appropriate and necessary.

Dated: March 8, 2022
New York, New York

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg
**BREWER, ATTORNEYS &
COUNSELORS**
750 Lexington Avenue, 14th Floor
New York, New York 10022
Telephone: (212) 489-1400
Facsimile: (212) 751-2849

**COUNSEL FOR DEFENDANT
THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

NYAG v. National Rifle Association of America et al., Index No. 451625/2020

Categorical Privilege Log of Documents Withheld by Aronson Pursuant to the Direction of the National Rifle Association of America on Privilege Grounds¹

March 8, 2022

CategoryNo.	Date Range	Document Type	Sender(s)/ Recipient(s)/ Copyee(s)	Category Description	Privilege Justification ²	Documents Withheld
1	Oct. 8, 2020 – Sep. 16, 2021.	Email, PDF,hard copy documents, electronic documents.	Attorneys: In-house and outside counsel for the NRA, including but not limited to John Frazer, Sarah Gervase, Bill Brewer, Sarah Rogers, Don Lan. Troutman Sanders. Client: The National RifleAssociation of America, including but not limited to John Frazer, Sonya Rowling, Craig Spray, Rick Tedrick, and AngelaSt. Onge.	Materials revealing substance ofattorney work product, trial preparation materials, and confidential communications between and among attorneys, client, and/or Aronson as adviser (1) providing legal advice; and/or (2) providing or requesting information to inform such advicepredominantly but not necessarilyexclusively in connection with the preparation of the NRA’s regulatory/tax filings. Information shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.	Attorney-Client PrivilegeAttorney Work Product Trial Preparation	45

¹ This categorical privilege log applies to documents that the Association instructed Aronson to withhold on grounds of privileges belonging to the NRA and/or its counsel for all documents teed up by Aronson for production and sent to the Association’s counsel on or before February 23, 2022. Please note that documents have been produced that contain redactions. To the extent the redactions are for privileges, as opposed to First Amendment, confidentiality, or PII, they fall into one of the categories listed herein. The NRA is available to provide information about specific redactions upon request.

² The documents are privileged under the attorney-client, work product, trial preparation and / or common interest privileges, and/or a combination of such privileges depending onthe individual document, email, or thread. No waiver of privileges occurred by including Aronson in or sharing these communications with Aronson because it was done in a confidential setting pursuant to an undertaking to maintain materials confidential and with the reasonable understanding that materials would be kept confidential. Moreover, the information was not shared in a manner that would make it more likely for the adversary to acquire them. Separately, on non-waiver of attorney-client privilege in this context, *see, e.g., Ross v. UKI, Ltd.*, 2003 WL 22319573 (S.D.N.Y. Oct. 9, 2003) and *U.S. v. Kovel*, 296 F.2d 918 (2d Cir. 1961). The inclusion of Aronson in the communications was necessary to enable efficient and informed advice to the NRA and/or enable Aronson’s work. Witnesses will testify that they understood these communications to be in furtherance of legal advice and confidential. The Authority provided by the New York State Office of the Attorney General on February 7, 2022 is factually inapposite and does not preclude the invocation of privileges herein.

CategoryNo.	Date Range	Document Type	Sender(s)/ Recipient(s)/ Copyee(s)	Category Description	Privilege Justification ²	Documents Withheld
2	Sep. 17, 2019 – Oct. 19, 2021.	Email, PDF,hard copy documents, electronic documents.	Attorneys: In-house and outside counsel for the NRA, including but not limitedto Sarah Gervase and Brewer, Attorneys & Counselors. Client: The National Rifle Association of America, including but not limited to John Frazer, Sonya Rowling, Craig Spray, Rick Tedrick, Michael Erstling, Portia Padilla, Tyler Schropp, and Angela St. Onge.	Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys andclient (1) providing legal advice; and/or (2) providing or requestinginformation to inform such advice predominantly but not necessarilyexclusively in connection with the audit of the NRA’s financial statements. Shared by the NRA with Aronsonon a confidential basis pursuant tocontractual confidentiality undertaking/obligation.	Attorney-Client Privilege Attorney Work Product Trial Preparation	5
3	Jan. 30, 2020	PDF, electronic document.	Attorneys: Outside counsel for the NRA, Brewer, Attorneys& Counselors. Client: The National Rifle Association of America.	Outside counsel’s billing statements revealing substance of confidential attorney-client communications, attorney work product, and trial preparation materials concerning active and pending legal matters, shared bythe NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.	Attorney-Client PrivilegeAttorney Work Product Trial Preparation	1

CategoryNo.	Date Range	Document Type	Sender(s)/ Recipient(s)/ Copyee(s)	Category Description	Privilege Justification ²	Documents Withheld
4	Mar. 6, 2021.	Email, PDF, electronic documents.	Client: The National Rifle Association of America, including Sonya Rowling, Rick Tedrick, and Portia Padilla.	Materials gathered at the request of the NRA’s bankruptcy counsel in support of the NRA’s application before the Bankruptcy Court for permission to pay Aronson in the ordinary course of business. ³	Attorney-client privilege Attorney Work Product Trial Preparation Common Interest	5

³ The documents in this category include multi-email threads that consist of communications over which the NRA claims asserted privileges. The NRA has no objection to Aronson producing the emails within this category exclusively between individuals from Aronson (as long as the understanding emails revealing materials protected by NRA privileges are redacted), although the NRA anticipates that for the reasons set forth in the certification Aronson will assert the same privilege over these documents.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON

PART

IAS MOTION 37EFM

Justice

-----X

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

INDEX NO. 451685/2020MOTION DATE 11/19/2020MOTION SEQ. NO. 007

Petitioner,

- v -

THE TRUMP ORGANIZATION, INC., DJT HOLDINGS LLC,
DJT HOLDINGS MANAGING MEMBER LLC, SEVEN
SPRINGS LLC, ERIC TRUMP, CHARLES MARTABANO,
MORGAN, LEWIS & BOCKIUS LLP, SHERI DILLON,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301

were read on this motion to

REARGUE

Upon the foregoing documents, it is hereby ordered that the instant motion to reargue is granted, and upon reargument this Court decides and orders as follows.

As set forth in this Court's Decision and Order on Motion dated September 23, 2020 (the "Prior Decision"), NYSCEF Doc. No. 255, familiarity with which may assist the reader, in this special proceeding, as now relevant, petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York, seeks to compel the production of documents allegedly relevant to an ongoing investigation into potential fraud or illegality by respondent The Trump Organization ("TTO") and related entities. Specifically, petitioner is investigating whether TTO improperly inflated, on various financial statements, the value of certain of its real estate assets in order to obtain tax and other financial benefits. The Prior Decision directed respondents to produce various categories of documents to this Court for an in camera inspection as to whether or not they were shielded by the attorney-client privilege or other protections against disclosure, while noting (at 2) that "disclosure to a third-party waives any privilege." Interestingly, the Prior Decision does not mention the name "Ralph Mastromonaco," whose sending or receipt of certain documents or other communications is the focus of the instant motion.

Respondents timely produced thousands of documents for the aforesaid inspection, and in Decisions and Orders dated October 16 and 30, 2020 ("the Disclosure Decisions"), this Court held that, pursuant to the "Kovel" doctrine, some, but not all, of the documents that Mr. Mastromonaco possessed were privileged. In United States v Kovel, 296 F2d 918 (1961), the United States Supreme Court held that communications with a third-party non-lawyer could

nonetheless be privileged if he or she were explaining complex technical subjects (in that case, accounting) to a lawyer in order for the lawyer to provide legal advice to the client.

Since Kovel, various federal and state courts have endorsed different nuanced standards for interpreting what level of assistance by non-lawyers is sufficient to invoke privilege protection. In the Disclosure Decisions, this Court followed the approach that myriad federal courts have taken: “the attorney-client privilege may extend to communications with third parties who have been engaged *to assist* the attorney in providing legal advice.” United States v Richey, 632 F3d 559, 566 (9th Cir. 2011) (emphasis added); accord, Golden Trade, S.r.L. v Lee Apparel Co., 143 FRD 514, 518 (SDNY 1992) (holding that “[i]f the [non-lawyer specialist] is acting to assist an attorney to provide legal services, the communications with him by the attorney or the client should come within the ambit of the privilege”). Consequently, the Disclosure Decisions afforded privilege under Kovel if a non-lawyer communication “helped” or “assisted” a lawyer to provide legal advice.

However, the federal courts do not apply the “helpful” standard consistently; indeed, for each federal case that TTO cites, approximately as many federal cases apply a “necessary” standard. E.g., United States v Ackert, 169 F3d 136, 139 (2d Cir. 1999). Furthermore, New York cases that bind this Court, overseeing a New York case applying New York law, tilt heavily toward the higher standard.

Petitioner now moves to reargue the Disclosure Decisions, asserting that this Court “overlooked or misapprehended” (CPLR 2221(d)(2)) controlling New York law in applying the higher, “necessary” standard. Ambac Assur. Corp. v Countrywide Home Loans, Inc., 27 NY3d 616, 624 (2016); Spicer v GardaWorld Consulting (UK) Ltd., 181 AD3d 413, 414 (1st Dept. 2020) (privilege applies only if “the presence of such third parties is deemed *necessary* to enable the attorney-client communication). Of note, the Prior Decision did not need to address directly whether Kovel protected Mastromonaco’s communications; and in issuing the Disclosure Decisions this Court seems to have lost sight of the forest for the trees, having overlooked Ambac and Spicer.

Moreover, as petitioner points out, the burden rested on TTO to provide the Court with sufficient evidence, from persons with actual personal knowledge, demonstrating that Mastromonaco’s communications were necessary, not merely helpful, to provide legal advice. TTO failed to do so. Notably, TTO, not Martabano, hired Mastromonaco; and Mastromonaco, a non-lawyer, was working for TTO for approximately a year before Martabano came on the scene. See Cavallaro v United States, 284 F3d 236, 248 (1st Cir. 2002) (that accounting firm was hired by taxpayer, as opposed to lawyer, is “probative when considering whether [accounting firm] was employed to help [law firm] render legal advice”). There is no affidavit from Martabano, an attorney versed in land-use issues, that he *needed* Mastromonaco to provide legal advice, and no documentary evidence to this effect. While this Court’s review of Mastromonaco’s communications found many documents that could “assist” TTO’s attorneys, it did not find anything that on its face, or in context, appeared necessary for providing legal advice, and TTO’s failure to satisfy, or even address, this burden in its many court filings results in a waiver of such claim.

Similarly, the Court's review of the Morgan Lewis productions has found that TTO failed to satisfy its burden of demonstrating privilege over communications that include third-parties that Morgan Lewis retained. Of the many experts and consultants hired by Morgan Lewis on behalf of TTO, there is no claim by anyone with personal knowledge at Morgan Lewis that any such consultant was *necessary* to its provision of legal services. As neither the face of the documents themselves, nor their contexts, demonstrates such necessity, and TTO has failed to furnish this Court with supplemental documents, as is its burden, this Court finds it has waived any such privilege over communications that include third-parties.

Furthermore, this Court also finds that TTO, the privilege holder, has explicitly waived any privilege claim it might have had to Mastromonaco's communications. As evidenced in petitioner's papers, TTO waived privilege, then attempted to claw back such waiver, several times (first through express waiver on December 10, 2019, then through inaction between December 2019 and January 2020).

Specifically, the record includes a December 16, 2019 email from petitioner's representative, Mr. Colangelo, to TTO, which states, in pertinent part:

To clarify, the request in the OAG's December 10 letter regarding Mr. Mastromonaco was not limited to communications between him and Cushman. As you were specifically responding to our request[,] we assume the limitation in your response was inadvertent, and we further assume that you are not asserting any privilege with respect to his work concerning Seven Springs. If this is not accurate, please advise.

(NYSCEF Doc. No. 174.) Despite some ambiguous assertions from TTO's counsel that petitioner should have understood from the context that TTO did not intend fully to waive privilege, the record is devoid of any affirmative communication by TTO in response to Mr. Colangelo's email until at least May 2020, over five months after the waiver.

Finally, the Prior Decision notes (at 1) as follows:

Preliminarily, none of the opposition papers that the multiple respondents filed contains an affidavit from anyone with personal knowledge of the factual matters at issue. Accordingly, the opposition papers that respondents submitted are not in admissible form. Zuckerman v City of New York, 49 NY2d 557, 560 (1980). That fact alone arguably justifies granting the petition in its entirety.

It does. It also justifies granting the instant motion, and upon reargument finding that no documents that non-party, non-lawyer Ralph Mastromonaco possessed, or communications with him, are privileged (TTO's having waived the privilege) and, going forward, that any other Kovel claims of privilege for documents or communications with non-lawyers must meet the "necessary" standard.

Accordingly, this Court hereby grants reargument; and upon reargument the Court modifies its previous orders as follows: by December 18, 2020 (1) Respondents TTO and Charles Martabano

shall produce all communications with Ralph Mastromonaco to petitioner; (2) all respondents are ordered to produce all communications to, from, or on which third-party non-lawyers are copied to petitioner; and (3) Morgan Lewis shall submit a revised privilege log and document production to the Court that no longer includes the documents hereby ordered to be produced.



20201215163208AENGORONBA1461C6C1E34BD3973E09296852F7D7

12/15/2020

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

☐

CASE DISPOSED

☒

NON-FINAL DISPOSITION

☒

GRANTED

☐

DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

From: Kathryn Cuddapah
Sent: Thursday, October 8, 2020 1:39 PM EDT
To: Kathryn Cuddapah; Richard Lee; Greg Plotts
Subject: Conversation with Kathryn Cuddapah, Richard Lee

Greg Plotts 1:56 PM:

hey let me know when free

Kathryn Cuddapah 2:29 PM:

I'm free

2:29 PM Connected to Kathryn Cuddapah (kcuddapah@aronsonllc.com).

2:58 PM Call with Kathryn Cuddapah (kcuddapah@aronsonllc.com) has ended. Duration: 0:28:50

Kathryn Cuddapah 4:16 PM:

Greg - Rick called to go over a few things, and did talk about the signing thing. He was shocked so we talked through the unknowns in the return so he can explain to Craig.

Kathryn Cuddapah 4:16 PM:

Call me if you want more details -

4:26 PM Connected to Kathryn Cuddapah (kcuddapah@aronsonllc.com).

4:51 PM Call with Kathryn Cuddapah (kcuddapah@aronsonllc.com) has ended. Duration: 0:25:10

Greg Plotts 9:04 AM:

can you pdf me the latest draft of the 990 for the NRA?

9:28 AM Kathryn Cuddapah asked to send you "**2019-NRA 990-Audit Committee.pdf**".

9:29 AM 2019-NRA 990-Audit Committee.pdf was saved to C:\Users\gplotts\Documents\My Received Files. It's a good idea to scan the file for viruses before you open it.

Greg Plotts 9:29 AM:

Thanks

Kathryn Cuddapah 9:30 AM:

I also saved the presentation materials that David Warren just emailed in this folder: [K:\44988\NRA 990s 2019\NRA 44988\Presentation](#) materials

Greg Plotts 9:31 AM:

I asked Crowe if they can give me examples of NFP orgs using C-Trac that does not have the paid preparer signed or has the attorney sign.....do you have any examples?

Kathryn Cuddapah 10:19 AM:

The email on Sch L I just copied you on is just FYI, not a big issue.

Kathryn Cuddapah 10:19 AM:

I will look for examples of 990s signed by attorneys

Kathryn Cuddapah 10:35 AM:

The American Bankers Association is self prepared

Kathryn Cuddapah 10:36 AM:

The Republican Governors Association is mysteriously not coming up, it's a c4 and I found the EIN, but not coming up on either IRS or Guidestar

Kathryn Cuddapah 10:38 AM:

I found Bank Policy Institute is signed by Ken Troshinsky - didn't we know him at another of our clients?

Kathryn Cuddapah 10:38 AM:

BPI has a CPA paid preparer

Kathryn Cuddapah 10:51 AM:

I can't find any - want me to ask Niki for any?

10:52 AM Connected to Kathryn Cuddapah (kcuddapah@aronsonllc.com).

11:23 AM Call with Kathryn Cuddapah (kcuddapah@aronsonllc.com) has ended. Duration: 0:31:36

Kathryn Cuddapah 11:43 AM:

Yes, disclosing all with explanations would be better

Kathryn Cuddapah 11:43 AM:

When in doubt, disclose it

Kathryn Cuddapah 11:44 AM:

and we don't have client privilege

11:54 AM Connected to Kathryn Cuddapah (kcuddapah@aronsonllc.com).

NPO-CX-1.1: Engagement Acceptance and Continuance Form

Organization: The National Rifle Association of
America
Completed by: Greg Plotts

Statement of Financial Position Date: 12/31/20
Date: August 2020- updated through June 10,2021

Instructions: This form is a guide for assessing potential audit clients and performing the annual reevaluation of existing audit clients, but it is not necessarily a complete listing of all factors that might be considered. Specific circumstances may require additional considerations. Complete this form before the engagement begins. Part I applies to all new or recurring engagements and includes general acceptance and continuance considerations. Part II includes additional considerations for initial audit engagements. You need to be familiar with the matters discussed in section 202 . Explain any "Yes" answers, excluding questions 1 and 2. Information gathered when completing or updating this form should be considered when identifying and assessing risks at [NPO-CX-3.1](#) , [NPO-CX-7.1](#) , and [NPO-CX-7.3](#) . The Comments column can be used to document any issues identified during the acceptance or continuance process.

Due to the high profile nature of the NRA and recent current events about the NRA including the NY Attorney General and the DC Attorney General lawsuits filed in August 2020, Aronson addressed the acceptance/continuance of this client for the 2020 Fiscal year audit (new client accepted in November 2019) in the following ways:

The engagement partner and Quality control partner met with our external counsel and our managing partner, Larry Davis, reached out to our Praxity network in order to get best practices on additional procedures around high profile client continuance/acceptance procedures.

From these discussions, Aronson decided to create an ad hoc committee for the performance and review of the continuance/acceptance procedures and have this committee collectively decide on whether or not continue performing services for the NRA for FY 2020 . This Committee was made up of the Managing Partner, Larry Davis, Board Member and Sr. Audit Partner, Tim Cummins; Audit Partner, Mike Muscatello, Quality Control, Lead of our Audit Practice, Partner, David Semendinger and Lead Engagement Partner on the NRA, Greg Plotts.

It was decided among other items that the Engagement Partner, Greg Plotts, Quality Control and lead A&A Partner, David Semendinger and Audit Sr. Manager, Will Donahue will have meetings with NRA's General In-house Council (John Frazier), Treasurer (Craig Spray), Executive Vice President (Wayne LaPierre), Audit Committee Chair Charles Cotton, Audit Committee Vice Chair, David Coy, and outside legal counsel, Brewer Firm (William Brewer or Sarah Rogers) in order to assist in the continuance decision.

The following meetings were conference calls that took place from mid-September to Early October 2020:

Meeting with Craig Spray, Treasurer and Rick Tedrick, Director of Finance on September 15th, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue)

Craig discussed the following

- Financial operating results through August 2020 – Highlights – Membership around 4.8 million (one of the highest figures ever) – Top revenue decreased from PYs due to Covid-19, no annual conference, FONRA events cancelled postponed for a time period, however expenses were greatly reduced from PYs due to reduction of vendor costs (marketing firm) (Infoscision -Membership development firm- NRA moving to more on-line and social media to obtain members rather than using infoscision which is much more costly), and layoffs and furloughs were done in April 2020. Paid down debt of approximately \$15M in 2020. Paid down loan to Foundation from \$5M to \$3M. Goal is to payoff Foundation debt by October. Moving to paying down all LOC, cut expenses and only bring back individual and programs if they are financially beneficial to the NRA. Best financial position that they have been in since he has been there. He was very happy the direction they were taking and that the Board, Wayne and executive management al on the same page with plan. They do plan on spending on election in 2020, however the PAC has increased contributions (August was the highest PAC contribution month ever at the NRA), ILA has enough money in place to run all programs w/o the need to increase LOC. (As of Sept 2020).

NPO-CX-1.1

- He was not aware of any Fraud or allegations of fraud. He was aware of a potential whistle blower submissions by a fired employee of ILA about a complaint of another employee in ILA. However he was not aware of all details and told us that we should follow up with Wayne, John and Charles to learn more. He was not aware of any "other" whistle blower submission. He mentioned that Wayne has submitted all expense reports and they were reviewed internally, however Brewer Firm (external Counsel) is reviewing all before they will be reimbursed. He was not aware of any specific internal investigation, however he mentioned the Brewer Firm has been and continues to go through many documents from 2015 -2019 to turn every rock over to be prepared for lawsuit.
- He stated that internal controls are stronger than ever and that he is not aware of any override of controls, he mentioned that he would not tolerate any one not following the control procedures. He mentioned Josh Powell and that he investigated him last year and found discrepancies in expense reporting and they let him go. He is aware and apparently read Josh's book about the NRA.
- We did discuss Susan's (Wayne's Wife) role as a volunteer in the Women leadership Forum of the NRA. He was not aware and was adamant that has never and would not approve private jet flights for Susan unless she was on the private flight with Wayne for the NRA's business purpose.
- They did a compensation study for key executives in 2020 and he sent the study and results to Aronson during the meeting. He said all compensation fell in line to be reasonable with the study. Craig was not aware if Wayne had a Post-Employment contract. He told us that would be a question for Wayne and the Board. Also Succession planning for Wayne is a question for them.
- He welcomed the comment that we made about having to perform additional procedures around the Lawsuits from NY and DC AG and he encourage us to review all material contracts with Vendors to ensure compliance. He stated that lawsuits were little nuggets of truths but they were embellished and twisted to a false narrative. He believes it is politically motivated and that they will fight and stand their ground. He also mentioned that these activities that were mentioned in lawsuit relate to activities back in 2018 and before and that he is positive they straightened and tightened up internal controls for FY 2019 and 2020. However it is a cash drain for legal costs, and these lawsuits are trying to drive a wedge between NRA and membership.
- He acknowledged that we will be evaluating going concern throughout the audit up through the date of our report in March 2021. He had no concerns as he believes they are and will be in a strong financial position, better than they have been in a long time.

Meeting with Wayne Lapierre, Executive VP(Bill Brewer external Counsel was present at meeting), on September 23, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue)

Wayne discussed the following

- Financial operating results through August 2020 – Highlights – Membership around 4.8 million (one of the highest figures ever) – Top revenue decreased from PYs due to Covid-19, no annual conference, FONRA events cancelled postponed for a time period, however expenses were greatly reduced from PYs due to reduction of vendor costs (marketing firm) (Infoscision -Membership development firm- NRA moving to more on-line and social media to obtain members rather than using infoscision which is much more costly), and layoffs and furloughs were done in April 2020. Paid down debt in 2020. Paid down loan to Foundation from \$5M to \$3M (September). Goal is to payoff Foundation debt by October. Finance department (Craig) has done a great job on cutting expenses and only bringing back individual and programs if they are financially beneficial to the NRA. Wayne mention that Craig has his full support and they are on the same page with financial plan. Best financial position that they have been in for a long time. He was very happy the direction they were taking and that the Board was on the same page with plan. They do plan on spending heavily on election in 2020, however the PAC has increased contributions (August was the highest PAC contribution month ever at the NRA), ILA has enough money in place to run all programs w/o the need to increase LOC, although they plan to have significant expenditures related to the election. (As of Sept 2020). They are in the midst of a "challenge fundraiser" to benefit the Whittington Center paying down their loan with the NRA (\$2M).
- He was not aware of any Fraud or allegations of fraud. He was aware of a potential whistle blower submissions by a fired employee of ILA about a complaint of another employee in ILA and a sexual Harassment charge. However he told us to talk with Charles Cotton, AC chair about the investigation as

NPO-CX-1.1
(Continued)

they are handling it. He was not aware of any "other" whistleblower submission. Wayne then mentioned that they fully investigate any whistleblower submission. He was not aware of any specific internal investigation, however he mentioned the Brewer Firm has been and continues to go through all contracts from 2018 and 2019 to turn every rock over to be prepared for AG lawsuit. He welcomed the comment that we made about having to perform additional procedures around the Lawsuits from NY and DC. He stated that they self-reported anything that was not in full compliance with NY NFP law and that they are fully (100%) compliant with NY NFP law for 2019 and 2020, as they have taken the opportunity to self-correct as described in NY NFP law's safe harbor provisions. Wayne said that NY took our self-reporting issues and ran with them in these fabricated lawsuits – they were little nuggets of truths but they were embellished and twisted to a false narrative. He believes it is politically motivated and that the NRA will fight and stand their ground and that they will win this battle. He also mentioned that these activities that were mentioned in lawsuit relate to activities back in 2018 and before and that he is fully confident 100% sure that they are compliant with NY NFP law in 2019 and 2020. They straightened and tightened up internal controls for FY 2019 and 2020. Any reports of fraud or fiduciary failure are in pursuit, they have encouraged whistleblower submission and ran every single whistleblower complaint down. They are not aware of any new whistleblower submissions in the last 6 months.

- He stated that internal controls are stronger than ever and that he is not aware of any override of controls. There have been steady improvements in the operations of ILA, and that leadership changes were made to improve tone at the top. They are continuing to look at building cost efficiencies, including Infocision, given the low membership rate of return.
- He was not familiar with a compensation study for key executives in 2020, and told us that is under the comp committee and the Board review. Wayne said that he is aware of post-employment agreement that was proposed by the Board. He said that Steve Hart proposed to him (Aronson to follow up on this matter). He has committed through 2021, but he is elected annually by the membership. He also believes that the post-employment agreement relates to an assumption that there will be a continued affiliation with the NRA after his retirement to assist with fundraising.
- He acknowledged that we will be evaluating going concern throughout the audit up through the date of our report in March 2021. He had no concerns as he believes they are and will be in a strong financial position, better than they have been in a long time.
- Lawsuits going on with Ackerman is pushed out to 2021 and Under Wild skies is going on right now. (Aronson will follow up with John Frazier and Brewer Firm). Carry Guard is "not quite" settled, but because Lockton was the insurance administrator, they believe they are responsible and agreed to indemnify NRA. Believes the case lacks merit as to any fault on the part of the NRA. He is not aware of any additional issues that could create reputation risk that have not already been disclosed.
- He stated the Brewer's firm has been investigating transactions from 2018-2020- although Brewer stated that this was in the context of their preparation for litigation and not a separate forensic investigation- Brewer stated that the audit committee is responsible for any internal investigations.

Meeting with David Coy, Vice Chair of Audit Committee, on September 22, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue)

David discussed the following:

- Financial operating results through August 2020 – Highlights – Same comments from above -. Paid down debt in 2020. Paid down loan to Foundation from \$5M to \$3M. Goal is to payoff Foundation debt by October. Finance department (Craig) has done a great job on cutting expenses and only bringing back individual and programs if they are financially beneficial to the NRA. He noted that not only are costs lower, but they have sought productivity improvements. Best financial position that they have been in for a long time. He was very happy the direction they were taking and that the Board was on the same page with plan. They do plan on spending heavily on election in 2020, however the PAC has increased contributions (August was the highest PAC contribution month ever at the NRA), ILA has enough money in place to run all programs w/o the need to increase LOC. (As of Sept 2020). He notes that some areas are understaffed that he would like to see additions to that are at the "heart" of NRA's mission- competitive shooting and education and training.

NPO-CX-1.1
(Continued)

- He was not aware of any Fraud or allegations of fraud. He was not aware of a whistle blower submissions He was not aware of any specific internal investigation, however he mentioned the Brewer Firm has been and continues to go through all contracts from 2018 and 2019 to turn every rock over to be prepared for AG lawsuit. He welcomed the comment that we made about having to perform additional procedures around the Lawsuits from NY and DC. David mentioned that the lawsuits were little nuggets of truths but they were embellished and twisted to a false narrative. He believes it is politically motivated and that the NRA will fight and stand their ground and that they will win this battle. He also mentioned that these activities that were mentioned in lawsuit relate to activities back in 2018 and before. They straightened and tightened up internal controls for FY 2019 and 2020.
- He stated that internal controls are stronger than ever and that he is not aware of any override of controls. ILA has been brought under Craig Spray's control and they are developing uniform procedures or there will be consequences from governance. He believes that there is strong tone at the top, that Wayne provides good leadership and he likes John Frazer.
- He was not familiar with a compensation study for key executives in 2020, and told us that is under the comp committee and the Board review and not under the audit committee. David said that he is not aware of any current post-employment agreement with Wayne. He mentioned that he thought there was an incentive to stay a few years back, but that is out of date now for the one he was talking about (\$500k bonus payment made in 2018). Wayne LaPierre, John Frazer, and Craig Spray have year to year contracts. He mentioned that they have been discussing Wayne's succession plan, but need to spend more time on that and also need to spend time of succession plan for the Board as they represent older members- Seasoned board members are needed for institutional memory
- He acknowledged that we will be evaluating going concern throughout the audit up through the date of our report in March 2021. He had no concerns as he believes they are and will be in a strong financial position, better than they have been in a long time.
- David spent time discussing the related party transaction review and conflict of interest review that is done by the audit committee and that they are all now being reported timely with a business case analysis. Among these were transactions with Barrett, a gun manufacturer, for items related to fulfillment for FONRA events. He emphasized that compliance is an ongoing process, not a once a year event. He encouraged us to review these and let him know immediately if we find any discrepancies.
- He has not had any contact with Woody Phillips, who is party to the ongoing litigation with the NY AG's office.

Meeting with John Frazier, In-house Counsel, on September 29, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue)

John discussed the following:

- He was aware of allegations of fraud against ex -employee Josh Powell for expense reporting which is still under investigation and he was also aware of allegation of not following internal controls with ex-employee Chris Cox (ILA) around competitive bidding of contracts, this is also under investigation along with the lawsuit around his departure. He was aware of a minor whistle blower submission around internal controls of competitive bidding contracts in ILA (the same issue related to Chris Cox)
- He stated that internal controls are stronger than ever and that he is not aware of any override of controls.
- He was familiar with a compensation study for key executives in 2017 and again in 2020, This study should be reviewed by compensation committee which the key members are Carolyn Meadows and Charles Cotton. John mentioned that he is aware of a post-employment contract with Wayne that was put in place in 2014 and is still in place today.
- Foundation loan to be paid in full by October. Lawsuits – Nothing new to Wild Skies, Ackerman, or FEC complaints. A few employment matters related to reduction of force. Carry Guard issue will be covered by Lockton.
- John spent time discussing the related party transaction review and conflict of interest review that is done by the audit committee and that they are all now being reported timely with a documented review process.

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(Continued)

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Meeting with Charles Cotton, Chair of Audit Committee, on October 5, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue)

Charles discussed the following:

- Financial operating results through August 2020 – Highlights – Membership has been very strong and he was surprised on how high membership was due to all the current events. However he also mentioned that he was not surprised as membership has always been strong when the NRA needed them most, especially when they are attacked politically and the 2nd amendment is being attacked. Revenue has been strong and expenses have been cut which has led to a very successful year. The last Q for revenue is at times the strongest and that has yet to come in. He was very positive on the Financial strength of organization.
- He was aware of Fraud and allegations of fraud. He was aware of Josh Powell expense reporting fraud, He also was aware of Chris Cox, (ex-ED of ILA) was under investigation by the NRA for the contracts he signed and that he operated under his own separate division with little oversight. They are in arbitration with Chris over his severance and investigation over contracts. He was aware of a minor whistle blower submissions, that ties into the ILA investigation. He was not aware of any specific internal investigation, however he mentioned the Brewer Firm has been and continues to go through all contracts from 2018 and 2019 to turn every rock over to be prepared for AG lawsuit. He welcomed the comment that we made about having to perform additional procedures around the Lawsuits from NY and DC. Charles mentioned that the lawsuits were poorly written and that NY AG came out with them in a hurry, as it is alleged that she found out that the NRA was coming at her with a lawsuit over 1st amendment rights (which happened hours after she first announced that she has a lawsuit with the NRA). He believes it is politically motivated and that the NRA will fight and stand their ground and that they will win this battle. He believes that the NY AG has lost respect by the democratic leadership and she is on an island with this ridiculous lawsuit. He also mentioned that these activities that were mentioned in lawsuit relate to activities back in 2018 and before. They straightened and tightened up internal controls for FY 2019 and in no way should there be any override of controls in 2020. There has been tone at the top that this will not be tolerated, and compliance seminars given to employees. He said he would be shocked if we found any non-compliance and would want to be notified immediately if we found anything. Not sure how long these lawsuits will linger, it depends on Governor of NY ability to work with AG, may be dismissed after election or may go on for another year.
- He was familiar with a compensation study for key executives in 2020, and told us that the Comp committee (which he is on) will be meeting very soon to go through the results. He did state the at the last one completed was in 2017, however key executive salaries have remained flat...so he was not concerned with the gap in time of the study. The salary cuts by key executives were voluntary and not pushed down by the committee. Charles was aware of a post employment agreement with Wayne, but mentioned that it will have to be updated as it has been out there a few years. He mentioned that they have been discussing Wayne's succession plan, but need to spend more time on that and hopes that Wayne will be around at least through the end of 2021.
- Charles mentioned that there may be the possibility of compensation that was not captured on Wayne's W-2 however they are just finding out that they need to look into this deeper and it is being handled by Bill Brewer.
- He is not aware of any internal investigations with AC, all is done through Brewer. Brewer is looking into contracts to make sure they are appropriate and or can they get out of them.

Meeting with Bill Brewer and Sara Rodgers, external council for NRA with Brewer Law Firm, on October 8, 2020 (Questions led by Greg Plotts and also in attendance was David Semendinger and Will Donahue from Aronson and Craig Spray from the NRA)

- Bill and Sara discussions were limited by attorney client privilege, therefore any discussions outside of official legal matters with the update on lawsuits were not answered. NY AG Lawsuit was discussed and how it was originally improperly assigned outside of commercial track and the appointed judge originally overseeing it was an elected official. With the NRA action it was removed from this lower court and reassigned to Commercial track (where larger suits against organizations are held and less threat of political bias). October 19th the NRA will be filing to dismiss lawsuit – this decision will take 30-60 days.
- DC AG – NRA filed to dismiss on September 22nd, waiting on that decision.

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(Continued)

- Wayne alleged criminal tax fraud case by IRS – As of October 8, 2020 they were not aware and nothing had been officially stated by the IRS on this lawsuit. They believe it was a leak inside the administration and the news outlets ran with the story. However not be surprised if this does come as is expected with the allegations by NY AG office over personal benefit that Wayne allegedly received.
- Chris Cox – is in Arbitration therefore they could not discuss but expects to wrap up by December, any loss contingency cannot be estimated at this time.
- Ackerman McQueen – Moved to Texas and Federal Court which is better for the NRA. The timeline of this lawsuit is still unknown, but expectations is that it will be in 2021. The NRA believes it is owed a significant amount of money, and that Ackerman McQueen may have been billing the NRA for services that were not provided to the NRA, but rather to other corporations.
- There were a few questions asked by Aronson on specific procedures, investigations, 990 review that the Brewer firm may have done or will be doing, and Bill made it clear that he could not respond to any of these questions under attorney client privilege.
- Therefore the Aronson team decided to make additional request to the Audit Committee and internal counsel.

Audit Committee Meeting:

Greg Plotts, Will Donahue, Kathy Cuddapah (990 tax director) and Kate Petrillo (EBP Partner) met with the Audit Committee on October 9, 2020. This was a scheduled meeting to discuss the results of the EBP audits and the status of the 2019 990. The majority of the time was spent walking through the 990.

The Audit Committee concluded they will have self-prepared 990 returns this year for the first time. This was due to the fact that the NRA invested in best of class 990 tax software that allowed them to prepare their own return, the investment made in training staff in 990 matters in 2019/2020, and that they had in fact prepared all returns. Aronson will review returns along with the NRA management, in-house counsel, external counsel, and Audit Committee.

The Audit Committee met with the auditors in executive session without the NRA Management. They acknowledged that they have a few items right now that need that attorney client privilege and the 990 really does not have a materiality limit on it, and understood that our review would be limited to only matters that we are privy to. They do not believe that we will be limited in our 2020 audit procedures as a few of these items are coming to a close. It was agreed that they would be involved in the external Council discussions with us to help us during the audit get through all information needed. They acknowledged that they may be needed and welcomed the idea of being more involved than normal in the audit process. Both parties agreed that we have a clear and direct line of communication with AC and they were appreciative on how frequent communication was happening.

Follow up with John Frazier:

Greg Plotts followed up with John Frazier on October 9th and requested a document that shows the steps taken that management and those charged with governance took to address the allegations of fraud and any whistle blower submissions in 2020. The following was received on October 16th -19th:

New York/DC Litigation – Compliance and Governance Review

As noted in the NRA's pleadings in a related case, the NRA became aware in 2017 that political opponents in New York state were pressing for an investigation of the NRA by the New York Attorney General. In response, the NRA began a compliance and governance review that continues to this day.

The NRA was officially notified of an investigation by the NYAG in April 2019 (and an initial subpoena was filed in June 2019). The NRA and the NRA Foundation also received subpoenas from the District of Columbia Attorney General in July 2019. In March 4, 2020, the organizations were notified that the two jurisdictions were formally coordinating their investigations and sharing documents. In response, the NRA notified all applicable insurers, issued litigation holds, and worked through already-engaged counsel to respond to the investigations.

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The two jurisdictions filed suit on August 6, 2020. The NRA again notified applicable insurers. Because both Wayne LaPierre and John Frazier are named as individual defendants, further management of the litigation is being performed through a Special Litigation Committee consisting of the NRA President and two Vice-Presidents.

(After requesting additional information from John -the following was received on October 19):

The review has been a three-year team effort overseen by the NRA officers, financial staff, and appropriate committees of the Board. Given the variety of items addressed, there has been no single venue for reporting. The Audit Committee has played a crucial role, but the full board and (depending on the issue at hand and appropriate response) other committees or groups of board members and staff have also been briefed on numerous occasions.

Because the review has occurred in connection with pending and anticipated litigation, the officers and Board have worked with in-house and external counsel (and other professionals), and those discussions are subject to attorney client privilege and the work product doctrine.

Whistleblower Items

Whistleblower items reported in 2020 meetings include:

1. A concern about a transaction between the NRA and a company owned by a staff member. However, the transaction had already been reviewed and approved by the Audit Committee.
2. Concerns raised by a former employee about financial issues within ILA. Some of the concerns proved to be without merit. Others are encompassed in the Cox arbitration. A review is in progress on the remaining items.
3. Concerns about a current employee's (a) potential violations of the NRA purchasing policy with respect to premiums for a donor event; and (b) submission of personal expenses for business reimbursement (which was denied). The employee is being disciplined for the expense reimbursement issue, and reminded of the need to properly document the justification for purchases without competitive bidding.

(After requesting additional information from John -the following was received on October 19):

With regard to the former ILA employee, the Audit Committee continues to oversee the review, which is being conducted by inside and outside counsel in connection with pending litigation.

As to the current employee expense reporting issue, the matter was first brought to the attention of the Office of General Counsel. Because the expense documents spoke for themselves, no investigation was needed, and the issue was briefed to the Audit Committee. Discipline was authorized by, and remains the responsibility of, the employee's division director.

Chris Cox Issues

Issues that have been raised with respect to expense reporting and control issues under prior ILA management are the subject of an ongoing confidential arbitration. A hearing is set for December 2020.

Sexual Harassment Allegations

You indicated that this issue came up in your interview with Wayne LaPierre. The only such issue that arose in 2020 was an Equal Employment Opportunity Commission charge of discrimination filed by an employee in April 2020, alleging "sex discrimination, harassment, and facilitation of a hostile work environment." The issue was settled through private mediation in June 2020. Under the final confidential settlement agreement, the employee left the NRA staff and released all claims. While approximately \$50,000 in staged settlement payments remain to be made, the NRA has no future liability based on the claims asserted in the EEOC charge.

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(follow up was received on October 19):

For the sake of completeness, I should also mention another former employee who has filed a charge of sex discrimination with the Equal Employment Opportunity Commission. The charge makes peripheral allegations of a hostile work environment based on supposed instances of misconduct in the workplace, but the allegations completely lack any details as to the individuals involved or even general time frames. The NRA noted these deficiencies in its response to the charge, which is now pending before the EEOC. A follow up e-mail from John Frazier saying that this was dismissed in October 2020.

Through the review of the lawsuit brought on by the NY AG office Aronson will perform the following additional procedures in the 2020 audit:

- #1. Select a sample (which will include Wayne LaPierre) of expense reimbursement of executive management team and test for compliance of NRA IC- See workpaper **SP 100**
- #2. LaPierre Senior Assistant – Review expense reimbursements made, if any, test for compliance with NRA's IC- See workpaper **SP 110**
- #3. Obtain all late expense reports (One year old) -(Verify if it needs to taxable) and test compliance for NRA IC- See workpaper **SP 120**
- #4. Select a sample of 25 from travel and entertainment account for the NRA Foundation, NRA, and ILA and test for compliance of NRA's IC. **SP 130**
- #5. Obtain listing of all individuals and expenses of those that received any gift with a FMV in excess of \$250 from any person or entity that has or seeks to have a business relationship or received funds for the NRA and test compliance of NRA's IC- **SP 140**
- #6. Obtain travel consultants' contracts, invoices and payments in 2020. Test for compliance on NRA IC over purchasing- **SP 150**
- #7. Obtain Contract, invoices and payments with MMP, Concord, Allegiance and ATI, WHIP LLC, McKenna, Akerman McQueen, Mercury Group, Under Wild Skies, H.W.S. if any, in 2020 and test for compliance of NRA IC.- **SP 160**
- #8. Obtain a list of vendors with aggregate invoices greater than \$1M in FY 2020 and test for compliance over NRA IC for purchasing. – **SP 170**
- #9. Listing of all related party transactions in 2020, test for compliance of NRA's IC- **SP 180**
- #10. Obtain Consulting agreement with former employees and current board members, test for compliance of NRA's IC including disclosure to the AC. - **SP 190**
- #11. Obtain expenses from Women Leadership Forum and select a sample to test for compliance of NRA's IC **SP 200**
- #12. Obtain and review the 2020 Conflict of interest statements from executive management and obtain a listing of any conflicts, obtain discussion of those conflicts and approval, if any. **SP 210**
- #13. Obtain updated Conflict of Interest Policy and Whistle Blower Policy **SP 220**
- #14. Obtain documentation of the process used to determine reasonable compensation for NRA Executives. (use of independent comp consultants; Comp surveys and studies, and comparability data) **SP 230**
- #15. Obtain a copy of LaPierre's current and post -employment contract, if any, test for compliance with NRA's IC. **SP 240**
- #16. Obtain Contract, invoices and payments with Brewer Law Firm in 2020 and test for compliance of NRA IC. **SP 250**

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- #17. AC in Charge of the review of Conflict of interest; Whistle Blower and related party transactions – Obtain Updated AC Charter to review updated policies and procedures. **SP 260**
- #18. Obtain Internal Audit considerations and any investigations on compliance matters **SP 270**
- #19. Inquire of Whistle Blower submission for 2020 and inquire on how they were addressed. **SP 280**
- #20. Obtain the AC review of Compliance programs **SP 290**
- #21. Obtain and discuss with management any needed disclosure of Related Parties in FS **SP 300**

Through the review of the lawsuit brought on by the DC AG office against the NRA Foundation Aronson will perform the following additional procedures in the 2020 audit:

- #1. Obtain Loan agreements between related parties (NRA Foundation and NRA), test for reasonableness and payments in accordance with agreements **PERM C-7, PERM C-7A, PERM C-7B, M 110**
- #2. Obtain Management fee contracts with related parties (NRA) and obtain calculation of management fees charged to the Foundation by the NRA to test adherence to the contract and reasonableness of expenses. **F 130, F 135, payments are made pursuant to board resolutions**
- #3. Obtain understanding of former employees consulting arrangements that are charged to the NRA foundation in the management fee, if any. – **We inquired with Sonya**, CFO and she was only aware of one current consulting agreement with a former employee who assists with donated firearms. If the donation is for the Foundation his consulting fees for handling the firearms and converting to cash or keep for investment/ museum, will be charged to the Foundation. If his fees are for any other entity this fees will be charged to the appropriate entity. During our testing we did not identify any additional former employees with consulting agreements charged to the NRA Foundation in the management fee – **See w/p 235B.**
- **#4. Obtain NRA Foundation's Board role in approving the NRA management fee SP 310**
- **#5. Obtain changes made to the Foundation Board; Policies; Training. None per discussions with Rick Tedrick and Sunee Stacks, NRAF.**

Aronson has also address the following in acceptance and continuance form:

- Legal risk assessment – We addressed with our (Aronson's) Attorney (Kevin Murphy) and we had Kevin review our engagement letter. Through his review and discussions we believe we understand the legal risk and this will not be a deterrent from us continuing with the NRA.
- Confidentiality risk/Cyber -We have notified Partners and staff on the engagement team to remind them of confidentiality of this client and refer any questions to Larry, David or Greg. We also worked with Azunna on securing the audit file to just the engagement team and IT department to have access.
- Reputational Risk – impact to other clients – considered and deemed a risk that Aronson acknowledges and is fine with accepting.
- Economic Risk for Firm – are we getting adequate return for the heightened risk and scrutiny. We will be doing additional procedures over the lawsuits and we have in the engagement letter that this will be done based on hourly rates. The team expects to get 90+% realization on the audit.
- Will be selective in the use of NRA on any proposal or marketing information. – This will be up to the AISG partners on a case by case basis on whether to use NRA as a reference.

Conclusion:

Results of inquiries and Procedures:

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(Continued)

Aronson validated results of inquiries over financial condition with receiving the summary September 2020 results. We found the following:

NRA summary - YTD Net Income was approx. \$40M, Cash Receipts YTD were down 14% compared to PY and expenses were down 23% compared to PY. There was a net cash inflow of \$20M which includes paying \$30M of debt. Debt is down from approx. \$60M at Dec 2019 to \$30M at September 2020.

Aronson Continuance Committee for the NRA discussed current events, fraud allegations, lawsuits, financial condition, among other things that were mentioned in our interviews documented above.

NRA's management has taken major steps in the past 2 years to enhance internal controls, oversight of long-term contracts, and Division reporting structure (especially ILA). Three years ago they hired Craig Spray – CFO of the organization, who came out of retirement after being a CFO of a public company and had a good understanding of best practices of internal controls. He has and continues to revamp stricter oversight and controls. He has the support of the AC, CEO, Board and management. They have terminated and re-bid out these long term vendors that could have the appearance of a lack of independence and conflict of interest. They have dealt with a lot of legal expenses and will continue that trend through 2020/2021. The NRA management was very transparent with all of our questions and these issues mentioned above.

The Audit Committee took and continue to take steps to address the allegations of fraud through October 2020 as mentioned above. The Audit Committee has been active in the oversight of the NRA and fraud allegations and have a clear and direct 2-way communication with Aronson.

Aronson found that the NRA was transparent, understands the issues and has had and still are making positive efforts to tighten controls. They continue to pursue the fight against the allegations made by NY and DC AG offices. We noted during our audit of 2019 that the implementation of best practice internal controls were done and high priority to the NRA, we also noted disciplinary actions were taken to those that circumvented controls. Audit Committee, Management and the CFO were very adamant that they will not tolerate any violations of their policies. They understand that they are dealing with an onslaught of political adversaries on a unprecedented scale and they need to have best in class controls so there is no room for misinterpretation of wrong doing.

The Engagement partner, QC partner and the entire continuance committee all agreed to move forward with the continuance of the NRA as a client for the 2020 audit.

Update to the Continuance documentation in May 2021 after the dismissal of the bankruptcy case:

January 15, 2021 the NRA filed for chapter 11 bankruptcy. The Chapter 11 filing was not widely known in the organization only a select few Board members and selected management had knowledge about it before it was filed. The NY attorney General, along with others (Ackerman McQueen) filed to dismiss the bankruptcy. After weeks of testimony it was Judge Hale decision to dismiss the bankruptcy. – “The question the Court is faced with is whether the existential threat facing the NRA is the type of threat that the bankruptcy Code is meant to protect against. The Court believes it is not. For the reasons stated herein, the Court finds there is cause to dismiss this bankruptcy case as not having been filed in good faith both because it was filed to gain an unfair litigation advantage and because it was filed to avoid a state regulatory scheme. The Court further finds the appointment of a trustee or examiner would, at this time, not be in the best interests of creditors and the estate.”

There were a few items that transpired during January 15, 2021 – through May 2021 that brought us to reevaluate the continuance of our 2020 audit. Aronson reconvened the acceptance and continuance team of partners on May 13, 2021. It was decided that Aronson would have another set of interviews with the audit committee (Charles Cotton, AC Chair on May 17 and Curtis Jenkins May 24), follow up calls with Sonya Rowlings and Rick Tedrick, and Craig Spray (who left the organization role of CFO in January 2021)

We would discuss with them:

- The integrity of management (especially centered around Wayne LaPierre)
- Results of the bankruptcy case
- The upcoming potential trial with the NY AG
- Internal controls
- The new CFO Sonya Rowlings and the departure of the ex-CFO Craig Spray
- Board members that were speaking out against the NRA management and leadership including Board member Journey.
- Finally our conversation was open to share any concerns that they had with us.

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Results of the inquiries

We found each individual very transparent, helpful, understanding for the reasons of our discussions, and encouraging us to reach out to anyone in the organization including Craig Spray.

Charles Cotton: May 17, 2021 Discussion with Greg Plotts;

Charles was disappointed by Judge Hale's decision. Positive that NY AG case was out in the open and he feels the NRA is in a good position and will be ready to fight whatever the NYAG brings as they did the self-correction in 2017 and had increasingly better controls in 2018 and especially in 2019 and forward. He is not aware of any integrity issues with current management and does not believe Wayne did any intentional misconduct. They hired Brewer to "audit" transactions and turn over rocks of where they may be vulnerable and if there was any intentional wrong doing by management or Wayne. If they found anything they would take serious action, including termination. They have not been given anything to take any actions on Wayne. They will protect and stand behind those that are falsely accused. He believes they put a lot of pressure on Wayne to increase membership and contributions over the years and therefore he was out of office traveling and speaking at events. Therefore while he was in charge of the organization he did rely on Woody Phillips (Past CFO 2000 - 2018) to keep finances and internal controls in order.

Charles believes they are in compliance with NY NFP regulations after self-correction. Charles also believes that Wayne did not know all the IRS and NYNFP rules before, however he is now in full compliance of IRS, NY regulations and NRA Internal controls. He also believes they have reported everything in the 990 under excise benefit transactions.

Unfortunately they are unable to appoint a chief compliance officer without changing by-laws, which takes time and approval from the Board, therefore they will be searching for an internal auditor that will report directly to the Board and Audit Committee.

He did mention four Board members that are being difficult or have an issue on the direction of the NRA, however they have over 70 Board Members at the organization, so they are in the minority. (Judge Journey, board member, joined the bankruptcy case wanting to appoint an examiner to investigate allegations of mismanagement by Wayne and others and also he was upset that the Board was not notified about the bankruptcy until it was filed) Charles also said that the Board was not required to be notified before bankruptcy filing.

Aronson asked specific questions around Gail Stanford (Travel Consultant) – Charles said they cut ties as they found that she may have double billed for some services and took advantage of the NRA.

Curtis Jenkins Discussions on May 24, 2021 with Greg Plotts

Curtis is an Audit Committee member. He did not have concerns with the integrity of management that was in place currently at the NRA. He did not have concerns with Wayne LaPierre actions, he was not aware of any willful intentional misconduct by anyone currently in the organization including Wayne. He believes that they will continue to fight off the NYAG as it will be hard to negotiate with someone that wants to dissolve your organization. He was not aware of any noncompliance of regulations including those for NY NFP organizations. He believes that Bill Brewer is doing a very good job with the litigation issues. He also believes strongly that Sonya is the perfect fit for the CFO and Treasurer of the NRA. He also agrees with Charles about setting up an internal audit person that will report directly to the Board and AC. He did not have any additional concerns at this time. He will be getting audio or transcripts of the witnesses testimony in the bankruptcy case to identify any possible concerns. He would reach out to Aronson if he came across anything that concerns him.

Multiple calls with Sonya, CFO in May 2021. She was very open in conversation about the bankruptcy trial, she would like to put the NYAG lawsuit behind them as soon as possible as it is a drag on operations with legal fees and disruption to the organization internally with all the request for the investigations by NY. The discussions of moving to Texas is putting a strain on the individuals that work at the NRA as they do not know how long they will be headquartered in VA.

She encouraged us to reach out to the AC and others in the organization including Craig Spray if we wanted to do that. She does not believe that current management has any integrity issues. She will continue on enhancing and evolving internal controls. David Coy (AC Vice Chair) and her will review Wayne's expense report together and will approve each expense report for payment in 2021. Currently (April 2021) Membership is holding steady of around 4,864,000 and an increase from December 2020 by 20,000 members. Also at April 30, 2021 the NRA was showing a net gain of \$45M YTD. However both the membership and financial numbers will slip starting in May 2021 as the 3 year parkland memberships will roll off, fewer campaigns going on right now and the payment of bankruptcy attorney and other fees will be a drag on FS results. They have begun paying Aronson's invoices that have been delayed due to bankruptcy.

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(Continued)

We asked Rick Tedrick and Sonya if they are aware of any fraud and they said they were not aware of any fraud at the organization and they also stated that they are not aware of any noncompliance with regulations.

Craig Spray did not return e-mail, phone call or text message sent by Aronson through May 25, 2021.

The continuance and acceptance committee at Aronson reconvened on May 25, 2021, it was determined that we will request that the NRA assist us in setting up a meeting with Craig Spray as he has not responded to our request to get together.

Aronson tried again multiple times to contact Craig with no success. The NRA told us that they will keep making requests to Craig Spray that he respond to us.

Aronson will continue to try to set up a meeting with Craig, however in the meantime Aronson received the transcripts of his testimony at the bankruptcy case and noted the following few points:

- The NRA and Craig decided to go their separate ways at the end of January 2021.
- He was going to retire soon and he was looking for his replacement externally in 2020.
- He felt that he was part of the communications on some items but was left in the dark about the bankruptcy filing. He thought he should have been consulted on bankruptcy.
- He was fine that he did not sign the 990 and that Wayne signed it as some of the information disclosed was before he arrived at the NRA.
- He did move out of his apartment in DC and moved his stuff out of his office as he was working remotely from Michigan in late 2020.
- He was upset that 3 Board members flew first class in 2020 after he had procedures in place for that not to happen unless there was specific written approval before the travel took place.
- He did state that he enhanced internal controls during his time at the NRA.

We received Craig Spray's Severance agreement on June 8, 2021. The agreement was signed on June 1, 2021. The agreement states that Spray was notified on January 28, 2021 that the NRA wished to make management changes and Spray was relieved on the day of his duties of CFO. Spray and the NRA agree that employment was "terminated by NRA without cause, or by employee for good reason". The agreement also noted that Spray and the NRA agree the Spray's duty as Treasurer shall conclude effective June 1, 2021. He will be paid a severance of 18 months.

Aronson and Craig Spray were finally able to connect by phone on June 9, 2021.

Craig was very transparent and open in his conversation

- He was not aware of any fraud at the organization
- He felt the 990 had great disclosures of everything he did know about and also items that were before his time. He did not sign the return because of the information before his time was privileged, he agreed that Wayne should be the one who signs it.
- He was concerned with Millie (Wayne Assistant and lobbyist) and with her expense reports; He did not know of anything else that was not disclosed in the 2019 990, however would have like to see Wayne to make a hard decision on Millie and let her go for the past discrepancies of expense reporting.
- Good internal controls were in place for 2020 – not aware of any breakdown of IC in 2020.
- Proud of where they ended up in 2020 both in IC and financially.
- Contracts it much better shape – MMP a little concerned – would like to rewrite contract and do metrics of performance– was on his list of items to do in 2021; InfoCision – another contract that he would crank down even more.
- He is not aware of any non -compliance with laws or regulations –
- He did not have any concerns with integrity of management including Wayne, AC, Board, Sonya, or other executive management currently at the NRA. However he said there is still a "Wayne said" culture. He did change it some while he was there, but would like to see that going forward – Example would be put it in writing what Wayne says and verbally approves.
- Travel no concerns in 2020 – the only issue was a few Board members taking Business/First class travel due to health issues without written approval before the travel. There was verbal approval "Wayne Said" but not written – Policy says either Wayne or CFO can approve first class/business class travel – Wayne did not give written approval only verbal. John Frazier's department still booked business/first class –

NPO-CX-1.1

(Continued)

Craig upset that it was not in writing – now NRA may need to disclose in 990 because not written approval

- Ted Nugent – Funding some of his shows – not sure of the financial return for the NRA – no metrics done that he is aware.
- Sonya – Capable CFO/Treasurer, it will be successful if she can say no to Wayne when needed. CFO should have severance package – Joe Debergalis and John Frazier also should have them.
- He pushed back on bankruptcy to Wayne and then 2 days later he was let go; An agreed memo went out that it was health reasons. Signed the Agreement on June 1, that said he was terminated from CFO position and was able to get severance.
- No Going concern issues. Obtaining D&O insurance or being self-insured, Craig believes should be top priority to ensure continuity of directors and officers. He also mentioned that he thought that the NYAG would prolong their investigation/lawsuit to drain finances from the NRA.

Aronson will be reviewing the Ted Nugent, MMP and InfoCision contacts during the 2020 audit. Aronson will also review expense reimbursements made to Millie.

The continuance and acceptance committee at Aronson reconvened on June 10, 2021, it was determined at that meeting that Aronson will continue working on the 2020 financial statement audit of the NRA.

Part I—General Acceptance/Continuance Considerations

	Yes	No	Comments
1. What services does the nonprofit organization desire from our firm:			
a. Audit of organization's financial statements in accordance with GAAS? (Specify basis of accounting.) GAAP	<u>X</u>	<u> </u>	See PS 120
b. Audit of compliance with the terms of a grant agreement? (Specify.) []	<u> </u>	<u>X</u>	
c. Single Audit?	<u> </u>	<u>X</u>	
Practical Consideration:			
• In a Single Audit, the audit is performed under <i>Government Auditing Standards</i> as well as the AICPA's generally accepted auditing standards. A link to <i>Government Auditing Standards</i> (the Yellow Book) is provided at Gov. Doc. No. 2 in PPC's <i>Government Documents Library</i> .			
d. Report on supplementary information in relation to the financial statements as a whole? (Specify.) []	<u> </u>	<u>X</u>	
e. Other attest services? (Specify.) Pension plan audits	<u>X</u>	<u> </u>	
f. Preparation of federal tax or information returns? (Specify.) Review of Form 990, Form 990-T, and State Returns	<u>X</u>	<u> </u>	See PS 120
g. Other nonattest/nonaudit services (such as assisting the client with preparing financial statements, preparing journal entries other than proposed audit entries, or preparing reconciliations)? (Specify.) Client prepares own FS; We assist as necessary	<u>X</u>	<u> </u>	See PS 120

	Yes	No	Comments
<p>Practical Considerations:</p> <ul style="list-style-type: none"> Financial statement preparation, cash-to-accrual conversions, and reconciliations are outside the scope of an attest engagement and are subject to the requirements for nonattest services to avoid independence being impaired. Nonattest service documentation can be performed at NPO-CX-1.2 , "Engagement Independence Compliance and Nonattest Services Documentation Form—GAAS Audits," and is further discussed in section 202 . As noted in the Appendix to AR-C 70, <i>Preparation of the Financial Statements</i> (link) , the preparation of the financial statements when the auditor is engaged to perform an audit is considered to be a bookkeeping service that is not subject to the guidance for performing an engagement to prepare financial statements as outlined in AR-C 70 . See PPC's <i>Guide to SSARS Preparation Engagements</i> for detailed guidance. 			
<p>2. Will our firm provide nonattest/nonaudit services to the client? [If you are performing only a GAAS audit, complete NPO-CX-1.2 to document all nonattest services the firm will provide and your independence considerations under the AICPA Code of Professional Conduct (GAAS). See above</p>	X		See PS 120; 155
<p>Practical Considerations:</p> <ul style="list-style-type: none"> The AICPA Code of Professional Conduct considers activities such as financial statement preparation, cash-to-accrual conversions, and preparing reconciliations to be outside the scope of an attest engagement and thus subject to the independence requirements for nonattest services. Government Auditing Standards provides similar guidance, clarifying that activities such as assisting with preparation of the financial statements, preparing journal entries other than proposed audit entries, and preparing reconciliations are considered nonaudit services. See also Question 9 of this checklist. AICPA and Government Auditing Standards independence requirements are discussed in section 202 . 			
<p>3. Briefly describe the intended use of the financial statements.</p> <p>For use by the Board of Trustees, Bank that holds debt and Members of the NRA</p>	X		
<p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider whether audited financial statements are needed to meet the requirements of any of the following: <ul style="list-style-type: none"> State charities registration agency. Bank or other lender. Private funding source. National affiliate or federated fund-raising organization. Governmental grantor agency. Single Audit (OMB's <i>Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards</i>) for organizations directly or indirectly receiving federal awards. Contract, grant, or other agreement. 			

	Yes	No	Comments
<ul style="list-style-type: none"> Consider whether the financial statements will be distributed to members, contributors, other funding sources, suppliers, employees, or the general public. Consider whether a deadline exists for delivery of the audited financial statements and whether the deadline restricts the firm's ability to complete the audit on time without compromising audit quality. 			
4. Is the financial reporting framework used by management to prepare the financial statements considered unacceptable?	_____	<u> X </u>	
Practical Considerations:			
5. Has management refused, or are there indications that management will refuse or be unable, to do the following:			
a. Accept responsibility for the preparation and fair presentation of the financial statements or for the design, implementation, and maintenance of internal control over the financial statements?	_____	<u> X </u>	
b. Provide us with unrestricted access to all information relevant to the preparation and fair presentation of the financial statements, any additional information we may request for the audit, and persons within the entity from whom we determine we need to obtain audit evidence?	_____	<u> X </u>	
c. Provide us with appropriate written representations at the conclusion of the engagement?	_____	<u> X </u>	
Practical Consideration:			
<ul style="list-style-type: none"> If Question Nos. 4 or 5 are answered "yes," AU-C 210.8 requires the auditor to discuss them with management. Unless required by law or regulation, the auditor should not accept the engagement if it is determined that the financial reporting framework used in the preparation of the financial statements is unacceptable or if an agreement that management understands its responsibilities has not been obtained. 			
6. Do firm personnel lack (or will they be unable to obtain) the necessary competence and capabilities to serve the client, including the ability to comply with any specialized industry, legal, or regulatory requirements?	_____	<u> X </u>	
a. Does the staff assigned to the engagement collectively lack the technical knowledge, skills, and experience to perform the engagement?	_____	<u> X </u>	
Practical Considerations:			
<ul style="list-style-type: none"> Consider whether the staff assigned to a Yellow Book audit collectively possesses the technical knowledge, skills, and experience necessary to be competent for the type of work being performed before beginning work on that assignment. Technical knowledge is discussed in Paragraphs 3.72–.73 and 3.75 of the Yellow Book and in section 108 of this Guide. For out-of-state or out-of-area prospective engagements, consider applicable state board of accountancy and local government licensing and registration requirements for the firm and its personnel. 			
b. Does the staff assigned to the engagement fail to meet the CPE requirements of the Yellow Book?	_____	<u> X </u>	

	Yes	No	Comments
<p>Practical Consideration:</p> <ul style="list-style-type: none"> Consider whether the staff assigned to conduct a Yellow Book audit meet its continuing education requirements. The auditor may document those requirements using the "Continuing Professional Education Documentation Form" at NPO-CX-1.4 . CPE requirements are discussed in Paragraphs 3.76–.81 of the Yellow Book and in section 108 of this Guide. 			
7. Is the staffing commitment, including the use of specialists, needed for the engagement beyond our capabilities?	_____	<u>X</u>	
<p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider whether the nature and requirements of the engagement demand professional competence (expertise) that the firm does not have and cannot reasonably obtain. Consider factors such as the availability of firm personnel during the required audit time frame to adequately complete the engagement. 			
8. Does the audit firm not have an appropriate internal quality control system in place and is an external peer review not completed (that is, report issued) at least once every three years?	_____	<u>X</u>	
<p>Practical Consideration:</p> <ul style="list-style-type: none"> Quality control and external peer review requirements are discussed beginning at Paragraph 3.82 of the Yellow Book and in section 108 of this Guide. 			
9. Is the firm unable to comply with independence, integrity, objectivity matters, conflicts of interest, or other ethical requirements? (If the conclusion is that the firm lacks independence, the client should be notified that the firm cannot be engaged to perform the audit.)	_____	<u>X</u>	See PS 155
a. If the engagement is subject to <i>Government Auditing Standards</i> , are there any independence or conflicts of interest problems with the <i>Government Auditing Standards</i> independence requirements?	_____	<u>N/A</u>	N/A
<p>Practical Considerations:</p> <ul style="list-style-type: none"> In July 2018, the GAO issued <i>Government Auditing Standards, 2018 Revision</i> (the 2018 Yellow Book). The 2018 Yellow Book is effective for financial audits, attestation engagements, and reviews of financial statements for periods ending on or after June 30, 2020, and for performance audits beginning on or after July 1, 2019. Early implementation is not permitted. It is important to note that practitioners must meet the independence requirements during the entire period to which the engagement applies, which could be as early as July 1, 2019, for some engagements. The practice aids in this Guide are designed for audits conducted under the 2011 Yellow Book. Additional information on the 2018 Yellow Book is provided in Chapters 1 , 2 , and 14 . The 2019 edition of <i>PPC's Guide to Single Audits</i> will include discussions of and practice aids that address the 2018 Yellow Book requirements. 			

Yes	No	Comments
<ul style="list-style-type: none"> If a Yellow Book audit is being performed, the firm should consider the ethical principles in Chapter 1 of the Yellow Book. Paragraph 1.19 of the Yellow Book states, "The credibility of auditing in the government sector is based on auditors' objectivity in discharging their professional responsibilities. Objectivity includes independence of mind and appearance when providing audits, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest. Maintaining objectivity includes a continuing assessment of relationships with audited entities and other stakeholders in the context of the auditors' responsibility to the public." The Yellow Book recognizes three general classes of impairments to independence: personal, external, and organizational all of which are discussed in section 202 of this <i>Guide</i>. If the firm has provided or plans to perform nonaudit services, it should be particularly cognizant of the prohibition against certain nonaudit services and also performing the audit. The following practice aid addresses the Yellow Book requirements relating to personal and external impairments: <ul style="list-style-type: none"> NPO-CX-1.3, which may be used to document the identification and evaluation of threats to independence under both the AICPA <i>Code of Professional Conduct</i> and <i>Government Auditing Standards</i>. <p>b. If this is a Single Audit, do we prepare indirect cost allocation plans for the client?</p> <p>Practical Considerations:</p> <ul style="list-style-type: none"> Sec. 200.509(b) of OMB's Uniform Guidance prohibits auditors who prepare indirect cost allocation plans from also performing audit services for the same organizations in years when the indirect costs recovered by the auditee exceed \$1 million. The prohibition applies to the firm, and not just the individual auditor(s) within the firm, that prepares the indirect cost proposal. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. Under previous editions of the Yellow Book, preparation of indirect cost proposals or cost allocation plans was identified as a nonaudit service that would not impair independence if supplemental safeguards are met. The 2011 Yellow Book does not specifically mention this nonaudit service. Instead, Paragraph 3.07 begins a discussion of a conceptual framework approach to independence "that can be applied to many variations in circumstances that create threats to independence and allows auditors to address threats to independence that result from activities that are not specifically prohibited by GAGAS." <p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider whether the firm meets the requirements of the AICPA <i>Code of Professional Conduct</i>, including (but not limited to): <ul style="list-style-type: none"> Whether firm personnel have a direct or material indirect financial interest in any of the nonprofit organization's for-profit subsidiaries or any loans to the nonprofit organization or its subsidiaries. Whether any firm personnel are associated with the client in the capacity of employee, manager, or member of the governing board (such as the board of directors or trustees) or similar capacity. 	<p>N/A</p>	

NPO-CX-1.1
(Continued)

	Yes	No	Comments
<ul style="list-style-type: none"> Whether there are any relationships with the client or conflicts of interest that might impair independence, such as advocacy relationships, fee disputes or unpaid (billed or unbilled) fees for services provided more than one year prior to the date of the report, litigation, conflicts of interest with existing clients that may arise if this engagement is accepted, or partners or other senior personnel who have been offered management level positions or have accepted offers of employment. Whether there are indications that the client will refuse to or be unable to accept responsibility for the financial statements, including any adjusting or correcting journal entries proposed by us. Whether the firm performs, or the terms of the new engagement require the firm to perform, nonattest services that impair independence. (See section 202.) Whether the client lacks accounting control (including ongoing monitoring) over data, if any, processed by us. If staff members from another firm that is not independent of the client are to participate in the audit, whether we are unable to arrange for proper supervision of their work. Whether a familiarity threat to independence exists when senior personnel serve on the attest engagement team for a long period of time and proper safeguards have not been applied. AU-C 220.13 specifically requires the engagement partner to perform certain procedures to form a conclusion on compliance with independence requirements that apply to the audit engagement. Those procedures are included and may be documented at NPO-CX-1.2, if you are performing a GAAS audit, but not a Yellow Book audit. That form can also be used to document threats to independence and actions to eliminate the threats. The auditor is required to identify and evaluate threats to independence using the conceptual framework established by the Yellow Book. This checklist does not address requirements that are specific to the firm's quality control policies and procedures for ensuring that the firm and its personnel comply with independence and other ethical requirements. See PPC's <i>Guide to Quality Control</i> for detailed guidance. 			
<p>10. Does it appear that sufficient audit evidence on which to base the audit opinion cannot be obtained?</p> <p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider whether the entity's financial reporting system (including internal control) is sufficient to provide evidence to support that transactions have occurred and that all of the transactions that should be recorded are, in fact, recorded. In an audit of group financial statements, consider whether sufficient audit evidence about the consolidation process and any significant components can be obtained, either by the engagement team or by using the work of component auditors. Procedures for audits of group financial statements are found in the Other General Planning Procedures at NPO-AP-1. Group components can be documented in NPO-CX-3.5. 		X	

	Yes	No	Comments
<p>11. Are there any concerns about management's integrity, including the identity and business reputation of the client's key management, related parties, and those charged with its governance, or the risks associated with providing professional services? (If you conclude that the client lacks integrity, the client should be notified that the firm cannot be engaged to perform the audit.)</p> <p>Allegation of fraud by Josh Powell over expense reporting – they let Josh go in Feb 2020 due to a number of issues – the expense reporting was identified as less than \$200K of possible non business expenses – a letter was sent to Josh to prove business expense or pay back to the NRA(PS 240) -Aronson will test Expense reporting process and do walkthrough of controls at PS 620. Also Chris Cox Ex- head of ILA, left in 2019 is in arbitration for severance and also under investigation for override of IC over contracts (June 2019 and before)</p> <p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider the following: <ul style="list-style-type: none"> The nature of the client's operations and its programs/activities practices. Information obtained from third parties as well as previous experience with the client. Information concerning the attitude of the client's management and those charged with governance toward aggressive interpretation of accounting standards and internal control over financial reporting. Whether any unresolved disagreements exist concerning the application of accounting principles. Consider whether the client— <ul style="list-style-type: none"> Takes aggressive accounting or tax positions that have led to repeated financial statement adjustments. Appears to have been untruthful in past audit responses or failed to provide vital audit evidence that proved to be readily available. Has placed pressure on the firm or its personnel regarding the restriction of audit procedures. 	<p>_____</p>	<p>_____ X _____</p>	<p>See above and side comments</p>
<p>12. Are you aware of any actual instances of fraud or violations of laws or regulations, or any allegations of fraud?</p>	<p>_____ X _____</p>	<p>_____</p>	<p>See above comments</p>
<p>13. Are there circumstances that might not permit an adequate audit and the expression of an unmodified opinion? (If so, discuss with the client the possibility of a modified opinion or disclaimer of opinion.)</p> <p>Practical Considerations:</p> <ul style="list-style-type: none"> AU-C 725.11 precludes the auditor from issuing an opinion on supplementary information, such as the schedule of expenditures of federal awards, if the auditor's report on the financial statements contains an adverse opinion or a disclaimer of opinion. If the audit is not required by law or regulation and management or those charged with governance have imposed a limitation on the scope of the audit such that the limitation would result in the auditor disclaiming an opinion on the financial statements, the auditor should not accept or continue the engagement (AU-C 210.07 and AU-C 600.16). 	<p>_____</p>	<p>_____ X _____</p>	

NPO-CX-1.1
(Continued)

	Yes	No	Comments
<ul style="list-style-type: none"> If an auditor's going concern emphasis-of-matter paragraph has occurred in the preceding year or may be a possibility in the current engagement, the auditor would normally discuss such situations with the client. <p>14. Has our review of information such as the latest annual and interim financial statements, income tax or information returns, auditor's reports, reports to regulatory agencies, other information filed with regulatory agencies, other auditor communications, or our previous experience with the client provided information that would cause us to regard the engagement as requiring special attention, presenting unusual risks or causing us not to want to be associated with the client?</p> <p>Practical Consideration:</p> <ul style="list-style-type: none"> Consider the following: <ul style="list-style-type: none"> The composition, qualifications, and autonomy of members of the board of directors and the audit committee (if there is one), including the number of outside directors. Management's response to suggestions made for improvements to internal controls. Whether significant portions of the entity or closely related entities are audited by others or unaudited. Whether the organization relies on long-term grants or multi-year pledges and its relationship with those grantors or donors. Whether the organization's accounting records are accessible and maintained sufficiently to permit tests of compliance with federal award programs if a Single Audit is performed. Whether the organization appears to be adequately funded, well administered, and relatively free from controversy and media coverage. Whether there is an existing or increased risk of business failure as evidenced by poor financial condition (or significant negative changes in financial condition), lack of management competence, unusually competitive conditions, etc. Significant pending or threatened litigation or regulatory investigations or changes in the client's litigation status. Whether there are other factors, such as destruction of client documents, that might prevent obtaining sufficient audit evidence to issue an opinion. <p>15. Does the engagement fail to meet the firm's standards from an economic standpoint?</p> <p>Practical Consideration:</p> <ul style="list-style-type: none"> Consider the following: <ul style="list-style-type: none"> Whether the client has the ability to pay for services in accordance with the firm's normal billing rates and policies. Whether the client frequently changes auditors. Whether the client operates in an industry with a high failure rate. Whether we have had difficulty collecting our fee, or the client has a history of being slow to pay professional fees. Whether the fee justifies pursuing the engagement in light of anticipated costs of obtaining and conducting the engagement. 	<p>_____</p>	<p>_____ X _____</p> <p>_____ X _____</p>	<p>See analysis above</p>

NPO-CX-1.1
(Continued)

	Yes	No	Comments
<p>16. Is there anything else about the client or the engagement that causes us to be uncomfortable about being associated with this client or the related engagement?</p> <p>Practical Considerations:</p> <ul style="list-style-type: none"> Consider whether there have been— <ul style="list-style-type: none"> Significant changes in client management or a high degree of turnover in key management positions. Significant changes in the nature of the client's activities. Significant undisclosed related-party transactions. Also consider the following: <ul style="list-style-type: none"> Whether the client is in an industry that the firm has chosen to abandon. Whether there are changes in the practice area of the firm that impact this client engagement. Whether the firm and individuals participating in the engagement are not properly licensed in the state the client operates. Whether there is any question about the client's ability to operate as a going concern. Whether there is anything about the engagement that subjects the firm to undue legal liability exposure. Whether during the engagement proposal process, the prospective client was unusually slow in providing required information or otherwise difficult when responding to typical requests and inquiries. Whether there are indicators that client accounting and financial reporting personnel lack the necessary competencies to maintain appropriate financial records. Whether there is any other information that would have caused the firm to decline the engagement had that information been available earlier. 	—	X	See above-

Acceptance or Continuance: (Some firms require concurrence with the acceptance or continuance decision by the managing partner, another designated partner, or a policy-making committee.)

We are satisfied that appropriate procedures regarding the acceptance and continuance of client relationships and specific audit engagements have been followed and conclusions reached are appropriate.

We should accept/continue ☒ or not accept/continue ☐ the engagement.

If issues were identified and the firm decided to accept or continue the engagement, document how the issues were resolved, including whether a conflict of interest that might be perceived as impairing your objectivity was disclosed and consented to by the client or other appropriate parties as required by *ET 1.110.010, Conflicts of Interest for Members in Public Practice* ([link](#)) . See above

Practical Consideration:

- Consider using an outside investigative firm to screen new clients, particularly clients in industries noted for having increased risk of fraud or violations of laws or regulations.

From: Greg Plotts
Sent: Thursday, February 20, 2020 11:48 AM EST
To: William Donahue
Subject: FW: Audit
Attachments: Ltr to M MacDougall - Powell expense review summary SIGNED .pdf

Greg M. Plotts

Partner

Aronson LLC

Expanding What's Possible

Direct Line: 301.231.6226

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From: Frazer, John <John.Frazer@nrahq.org>
Sent: Thursday, February 20, 2020 10:34 AM
To: Greg Plotts <GPlotts@aronsonllc.com>
Cc: Spray, Craig <CSpray@nrahq.org>
Subject: RE: Audit

EXTERNAL EMAIL

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender, recognize their email address, and know the content is safe.

Greg,

I understand from Sonya that you're referring to Forensic Risk Alliance's analysis of Josh Powell's expenses.

The firm was engaged on a privileged basis, but the key findings were incorporated into the attached letter that was sent to Mr. Powell's attorney. The exhibits are available at <https://websftp-us.forensicrisk.com/login.html>

User name for the link: JF_External
Password to follow separately.

I'm sorry for the delay getting back to you – we had some technical problems with the link. Please let me know if you have any questions.

Sincerely,

John Frazer
Secretary and General Counsel
National Rifle Association of America
[11250 Waples Mill Rd.](#)

[Fairfax, VA 22030](#)
[\(703\) 267-1254](#)
john.frazer@nrahq.org

From: Greg Plotts [<mailto:GPlotts@aronsonllc.com>]
Sent: Tuesday, February 18, 2020 8:11 PM
To: Frazer, John <John.Frazer@nrahq.org>
Subject: Audit

John,
I hope all is well. I wanted to get a copy of the Forensic risk report /results of their procedures.
I will be out at the NRA headquarters Thursday and Friday if you would like to discuss.
Thanks!
Greg

Greg M. Plotts
Partner

Aronson LLC

Expanding What's Possible

111 Rockville Pike, Suite 600 | Rockville, MD 20850

*****We have moved effective December 2nd. New address is above.***

Direct Line: 301.231.6226

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