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July 1, 2022

VIA NYSCEF

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

Re: *People v. Nat'l Rifle Ass'n of Am., Inc., Wayne LaPierre, Wilson Phillips,
John Frazer and Joshua Powell*, Index No. 451625/2020

Dear Justice Cohen,

In accordance with the Court's direction to the parties to avoid duplicative motions and briefing where possible, I write on behalf of Wayne LaPierre to inform the Court that Mr. LaPierre joins in the letter application dated June 29, 2022, made by defendant National Rifle Association of America ("NRA") to Your Honor (NYSCEF Doc. No. 731), adopts the NRA's arguments, and seeks parallel relief—i.e., (i) an order extending, under Rule 11-d(f), the duration of the deposition of non-party Peter Brownell, former President and Board member of the NRA and directing Mr. Brownell to appear for a continuation of his deposition; or (ii) in the alternative, an order declaring that no portion of Mr. Brownell's deposition may be used against Mr. LaPierre at an evidentiary hearing, in connection with summary judgment, at trial, or in any other manner, over Mr. LaPierre's objection.

At the conclusion of Mr. Brownell's deposition, I adopted the arguments made by counsel for the NRA in support of her request for an opportunity to cross-examine Mr. Brownell, and objected to Mr. Brownell's deposition being closed without being afforded an opportunity to cross-examination him. Exhibit A at 323:7-11 ("I think that Ms. Eisenberg stated it beautifully, and I adopt the same position with respect to Mr. LaPierre."). In addition, shortly after the deposition, in an email to all counsel, I stated my position as follows:

On behalf of Wayne LaPierre, I join in the NRA's request to have Mr. Brownell make himself available to continue his deposition on a mutually convenient date in October. I will make every effort to be available on the day that works best for Mr. Brownell.

To answer Svetlana's question, I do not anticipate needing more than 30 minutes to an hour for cross-examination, if that, but I am reserving all rights should there be additional cross-examination by the NYAG or anyone else.

Hon. Joel M. Cohen

July 1, 2022

Page 2 of 2

As I stated on the record, Mr. LaPierre is reserving all rights and waiving none with respect to the use, over his objection, of Mr. Brownell's testimony as against him at any hearing or trial should he not be afforded the opportunity to cross-examine Mr. Brownell.

Respectfully submitted,

/s/ P. Kent Correll

P. Kent Correll

Counsel for Defendant Wayne LaPierre

Attachment (Exhibit A: Excerpt from Brownell Transcript)

cc: All Counsel of Record (via NYSCEF)

Nicholas A. Klinefeldt (via electronic mail: nick.klinefeldt@faegredrinker.com)

EXHIBIT A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
PEOPLE OF THE STATE OF)
NEW YORK, BY LETICIA)
JAMES ATTORNEY GENERAL OF) Index No.
THE STATE OF NEW YORK,) 451625/2020
)
Plaintiffs,)
) VIDEOCONFERENCE/
vs.) VIDEOTAPED
)
THE NATIONAL RIFLE) DEPOSITION OF
ASSOCIATION OF AMERICA,)
INC., WAYNE LAPIERRE,) PETER R. BROWNELL
WILSON PHILLIPS, JOHN)
FRAZER, AND JOSHUA POWELL)
)
Defendants.)
)

THE VIDEOCONFERENCE/VIDEOTAPED
DEPOSITION OF PETER R. BROWNELL, taken before
Gale Sweeney Christensen, Certified Shorthand
Reporter, Registered Professional Reporter,
and Notary Public of the State of Iowa,
commencing at 9:37 a.m., October 1, 2021, at
Suite 3300, 801 Grand Avenue, Des Moines,
Iowa.

Reported by: Gale Sweeney Christensen,
CSR, RPR

<p style="text-align: right;">Page 318</p> <p>1 Wells Fargo's loan? Do you see what I'm 2 saying? 3 A. No. Subrogate meaning what? 4 Q. Meaning that it agreed to pay Wells 5 Fargo back first before it repaid the NRAF. 6 A. Oh, I have no knowledge of any 7 agreements along those lines. 8 MS. CONNELL: You know, I would 9 like to continue. I know you've been patient 10 and you said that Mr. Brownell was going to 11 leave more than a half an hour ago, and I 12 appreciate you extending that. I think we 13 can let him go and have our discussion on the 14 record. 15 MR. KLINEFELDT: Well, I'm going to 16 keep him here, since it's his deposition, on 17 the record. 18 MS. CONNELL: Sure. 19 MR. KLINEFELDT: And we have about, 20 I think, by my count less than ten minutes on 21 the seven-hour limit. Maybe let everyone 22 make their record. I'll make a brief record, 23 and then we'll conclude. 24 MS. CONNELL: Well, I mean, I want 25 to be clear I could go on questioning him.</p>	<p style="text-align: right;">Page 320</p> <p>1 MS. EISENBERG: Can you answer my 2 question? How much more do you have? 3 MS. CONNELL: I would say I have 4 twenty minutes at least. 5 MS. EISENBERG: Okay. So here is 6 my statement on the record: This is Svetlana 7 Eisenberg on behalf of the NRA. So this is a 8 deposition that was noticed by the New York 9 Attorney General's Office. At the beginning 10 on the record, I asked them to clarify 11 pursuant to which procedural Rule they are 12 taking this deposition and that I assumed, in 13 the absence of clarity, that this was being 14 done pursuant to Article 31 of the CPLR. As 15 the record reflects, Ms. Connell refused to 16 provide such clarity, but in the absence of a 17 specific reference to a CPLR section in the 18 subpoena or courtesy of Opposing Counsel 19 providing me with that information, I am 20 currently operating under the assumption that 21 we are, indeed, proceeding within the 22 strictures of Article 31 of the CPLR. 23 Assuming that's where we are, under 24 Rule 3117 of the CPLR, the -- a deposition 25 can be used at a trial or a hearing but on</p>
<p style="text-align: right;">Page 319</p> <p>1 MR. KLINEFELDT: Absolutely. I 2 know, but it sounds like we have to have some 3 time to make record, and I guess we are less 4 than ten minutes to our seven-hour -- 5 MS. EISENBERG: Let's decide on the 6 order in which we will make our record, who 7 will go first. Mr. Klinefeldt, do you want 8 to go first? 9 MR. KLINEFELDT: Mrs. Eisenberg, do 10 you want to go first? 11 MS. EISENBERG: Yes, I am happy to 12 do that; although, I do have a question for 13 Ms. Connell. How much more do you have? 14 MS. CONNELL: Ms. Eisenberg, I 15 could go on for a long time, but I certainly 16 have ten minutes' worth, but I've been 17 jumping around so much, I would need to take 18 a look at what I want to -- 19 MS. EISENBERG: Can you give us a 20 range? How much do you have? Ten to 21 twenty minutes or -- 22 MS. CONNELL: I mean, I don't -- I 23 don't know if I am negotiating with you. 24 Mr. Klinefeldt made it pretty clear that 25 Mr. Brownell is done, so --</p>	<p style="text-align: right;">Page 321</p> <p>1 certain conditions. One of those is that the 2 party against whom it's being used must have 3 been present or represented as of the taking 4 of the deposition. Clearly the NRA was 5 present and represented. But the key 6 provision of that Rule is that it permits use 7 of depositions at trial only, quote, so far 8 as admissible under the Rules of Evidence, 9 closed quote. 10 So that takes us into the Rules of 11 Evidence in New York. And they make crystal 12 clear that the only way the deposition can be 13 used against my client, the NRA, is if the 14 NRA had the opportunity to be represented by 15 Counsel at the deposition but also to 16 cross-examine the witness. And that comes 17 from Section 8.36, part 2, of the Guide to 18 New York Evidence. 19 So here we are. We've been on the 20 record for about seven hours. I have not had 21 an opportunity to ask a single question. 22 Ms. Connell, by my count, has covered over 25 23 different topics. So I do have quite a few 24 cross-examination questions. I have not been 25 given any opportunity to ask my</p>

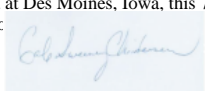
<p style="text-align: right;">Page 322</p> <p>1 cross-examination questions with regard to 2 any of the 25 or so topics covered by 3 Ms. Connell. And sitting here right now, I 4 estimate that I will have between two to 5 three hours of cross-examination questions. 6 Now, I do recognize that under the 7 Commercial Division Rule the deponent is 8 presumptively going to be deposed only for 9 seven hours, but the Rules also provide for 10 the flexibility depending on the 11 circumstances and the facts surrounding a 12 particular witness. So I hope that we can 13 work with Mr. Klinefeldt, Mr. Brownell's 14 counsel, and the New York Attorney General's 15 Office to find a mutually convenient time 16 either the next week or the week after so 17 that the NRA can have the opportunity to 18 cross-examine the witness. 19 Of course, if we were denied that 20 opportunity, we would take the position and 21 do take the position that the deposition is 22 not usable at a trial or a hearing against 23 the NRA over the NRA's objections. 24 So we are available to meet and 25 confer with Mr. Klinefeldt and everyone else,</p>	<p style="text-align: right;">Page 324</p> <p>1 other questioning is finished. 2 The only thing I'll say 3 additionally in response to what the NRA's 4 Counsel is is that discussions about 5 rescheduling or continuing this deposition 6 need to include all of the parties. It's not 7 just an issue for the NRA to work out with 8 the Attorney General's Office. 9 MS. EISENBERG: Absolutely agreed. 10 MR. KLINEFELDT: And I think that's 11 everybody except me; is that correct? 12 MS. CONNELL: And then I want to. 13 Thank you. 14 MR. KLINEFELDT: Yes, and we'll let 15 Ms. Connell finish. 16 So we are now -- it's 6:17 Central 17 Standard Time. We started the deposition at 18 9:00. It was scheduled to start at 9:00. 19 Anyway, Mr. Brownell has been here since 20 9:00. And, you know, we'd asked that it -- 21 we be done by 5:00. That would be eight 22 hours with some reasonable lunch and restroom 23 breaks. 24 Mr. Brownell has been here now for 25 over nine hours excluding a half-hour lunch</p>
<p style="text-align: right;">Page 323</p> <p>1 but that is the NRA's position, and we 2 certainly are keeping this deposition 3 continuing and open for the reasons that I 4 just said. 5 MR. KLINEFELDT: Would anyone else 6 like to make a record? 7 MR. CORRELL: Yes. This is Kent 8 Correll on behalf of Wayne LaPierre. I think 9 that Ms. Eisenberg stated it beautifully, and 10 I adopt the same position with respect to 11 Mr. LaPierre. 12 MR. FLEMING: This is William 13 Fleming. I just wanted to get on the record 14 to say that I do have questions for the 15 witness and agree. I hope we can kind of 16 work out a mutually convenient time for 17 everyone. Thank you. 18 MR. MCLISH: Tom McLish for Josh 19 Powell. We reserve our rights to 20 cross-examine the witness and hope that we 21 can work it out to reconvene and finish the 22 deposition. 23 MR. FARBER: Yes, this is Seth 24 Farber on behalf of Mr. Phillips. We'll 25 reserve our rights to ask questions after the</p>	<p style="text-align: right;">Page 325</p> <p>1 break and a few short restroom breaks. He 2 accepted service of this subpoena. He then 3 agreed to reschedule the deposition at the 4 State's request to give them additional time 5 and was happy to accommodate that. 6 However, we are now at -- and we 7 had asked, when accepting service of that 8 subpoena, that the State reach out to the 9 parties to help coordinate if they were going 10 to have questions or wanted to depose him. 11 It's my understanding the State had made good 12 on that effort and did not hear anything 13 back. But we have now been here on the 14 record now for over seven hours, and that 15 does not include the thirty-six minutes that 16 should be tacked onto that from 9 a.m. to 17 9:36 a.m. this morning while we were dealing 18 with the State's document issues. 19 And so it is -- it is my position 20 that Mr. Brownell should be done being 21 deposed now. We are objecting to the holding 22 open of this deposition or any further 23 reservations for cross-examination and would 24 be objecting to any further depositions of 25 Mr. Brownell in this case.</p>

<p style="text-align: right;">Page 326</p> <p>1 Ms. Connell?</p> <p>2 MS. CONNELL: Thank you,</p> <p>3 Mr. Klinefeldt. I disagree with your</p> <p>4 position, Svetlana. I disagree,</p> <p>5 Mr. Klinefeldt, that we should be charged</p> <p>6 with problems initiating -- for the time for</p> <p>7 the problems initiating for beginning the</p> <p>8 deposition in this case that were largely</p> <p>9 technical. They weren't document problems by</p> <p>10 the State. They were some technical problems</p> <p>11 in setting up the deposition. I don't think</p> <p>12 that should be counted against us.</p> <p>13 I think, in terms of coordinating</p> <p>14 questioning, at times we need more than the</p> <p>15 seven hours we are entitled to, and that was</p> <p>16 something that, you know, we can discuss or</p> <p>17 could discuss. But I did ask if anyone else</p> <p>18 intended to depose Mr. Brownell and asked</p> <p>19 that they speak, and no one spoke.</p> <p>20 So, Svetlana, I don't feel like</p> <p>21 having Mr. Brownell sit here when it sounds</p> <p>22 like you and I may face an evidentiary debate</p> <p>23 in front of the Judge is necessary. I will</p> <p>24 just say that I disagree with that.</p> <p>25 I will also say that I appreciate</p>	<p style="text-align: right;">Page 328</p> <p>1 or not I would have cross-examination</p> <p>2 questions until I heard Ms. Connell's</p> <p>3 questions. And she certainly did not advise</p> <p>4 me of what they were going to be before the</p> <p>5 deposition.</p> <p>6 MS. CONNELL: Svetlana, one</p> <p>7 thing --</p> <p>8 MR. KLINEFELDT: Can we go off the</p> <p>9 record so Pete can go?</p> <p>10 MS. CONNELL: One thing, one thing.</p> <p>11 Svetlana, did you say you had three to</p> <p>12 four hours of questioning from Mr. Brownell?</p> <p>13 MS. EISENBERG: I said two to</p> <p>14 three.</p> <p>15 MS. CONNELL: Two to three hours of</p> <p>16 questioning for Mr. Brownell. Thank you.</p> <p>17 That was all I had.</p> <p>18 MR. KLINEFELDT: All right. Can we</p> <p>19 go off the record now?</p> <p>20 MS. CONNELL: Yep.</p> <p>21 MR. KLINEFELDT: Thank you.</p> <p>22 THE VIDEOGRAPHER: We are off the</p> <p>23 record at 6:22 p.m.</p> <p>24 MR. CORRELL: Hold on. This is</p> <p>25 Kent Correll for Wayne LaPierre. I also just</p>
<p style="text-align: right;">Page 327</p> <p>1 Mr. Brownell's patience today, and I thank</p> <p>2 you for appearing.</p> <p>3 And I appreciate, Counsel, your</p> <p>4 attempts to work with me, even though we</p> <p>5 disagree with -- I disagree with you in terms</p> <p>6 of some of the time you're charging to me,</p> <p>7 but I don't think we all need to sit here on</p> <p>8 the record to work this out further. I think</p> <p>9 this sounds like a dispute that the parties</p> <p>10 need to meet and confer on and move forward.</p> <p>11 MS. EISENBERG: I just want to</p> <p>12 respond to something Mr. Klinefeldt and</p> <p>13 Ms. Connell said. In terms of the deposition</p> <p>14 outreach and asking whether the NRA was going</p> <p>15 to ask questions of Mr. Brownell, you didn't</p> <p>16 need to notice him. Everyone has limits up</p> <p>17 to how many depositions they get to take</p> <p>18 presumptively, and so it is the deposition of</p> <p>19 the New York Attorney General's Office, but</p> <p>20 that doesn't mean that we don't get to</p> <p>21 cross-examine the witness based on the</p> <p>22 questions that Ms. Connell asked.</p> <p>23 So those are two different issues.</p> <p>24 And, of course, I was not in a position to</p> <p>25 provide an answer to the question of whether</p>	<p style="text-align: right;">Page 329</p> <p>1 wanted to disagree that there was an outreach</p> <p>2 to -- by the AG's Office to try to provide</p> <p>3 time for questioning. And I also want to</p> <p>4 reiterate the fact -- or the point that</p> <p>5 Svetlana made, which was it's very hard to</p> <p>6 decide whether you want to ask questions</p> <p>7 before you've heard what questions the AG has</p> <p>8 asked.</p> <p>9 So I don't want to be viewed as</p> <p>10 adopting the characterization that Nick or</p> <p>11 Monica have made of our discussions, and I</p> <p>12 just reserve my client's rights. And we'll</p> <p>13 try to work it out if we can. And if we</p> <p>14 can't, we all know where the courtroom is.</p> <p>15 MS. CONNELL: Kent, I know you're</p> <p>16 never adopting my arguments. I know that.</p> <p>17 That goes without saying.</p> <p>18 MR. KLINEFELDT: All right. Thank</p> <p>19 you.</p> <p>20 MS. EISENBERG: I'm sorry --</p> <p>21 MR. KLINEFELDT: We're going to go</p> <p>22 ahead and end the deposition there. You want</p> <p>23 to let him out?</p> <p>24 MS. CONNELL: Mr. Brownell is</p> <p>25 leaving the room, guys.</p>

Page 330

1 MR. KLINEFELDT: Yeah, we are going
2 off the record now.
3 (Deposition adjourned at 6:32 p.m.)
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Page 331

1 CERTIFICATE
2
3 I, Gale Sweeney Christensen, a
4 Certified Shorthand Reporter of the State of
5 Iowa and Registered Professional Reporter, do
6 hereby certify that there came before me at
7 the time, date, and place hereinbefore
8 indicated, the witness named on the caption
9 sheet hereof, who was by me duly sworn to
10 testify to the truth of said witness's
11 knowledge, touching and concerning the
12 matters in controversy in this cause; that
13 the witness was thereupon examined under
14 oath, the examination taken down by me in
15 shorthand, and later reduced to printed form
16 under my supervision and direction, and that
17 the deposition is a true record of the
18 testimony given and of all objections
19 interposed.
20 I further certify that I am neither
21 attorney or counsel for, or related to or
22 employed by any of the parties to the action
23 in which this deposition is taken, and
24 further that I am not a relative or employee
25 of any attorney or counsel employed by the
parties hereto or financially interested in
the action.
Dated at Des Moines, Iowa, this 7th
day of Oct


CERTIFIED SHORTHAND REPORTER,
REGISTERED PROFESSIONAL
REPORTER, AND NOTARY PUBLIC

Page 332

1 ACKNOWLEDGMENT AND ERRATA OF DEPONENT
2 I, PETER R. BROWNELL, do hereby certify
3 that I have read the foregoing transcript of my
4 testimony taken on 10/1/21, and further certify
5 that it is a true and accurate record of my
6 testimony (with the exception of the corrections
7 listed below):
8 Page Line Correction
9 _____
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12 _____
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14 _____
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17 _____
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21 _____
PETER R. BROWNELL
22
SUBSCRIBED AND SWORN TO BEFORE ME
23 THIS ____ DAY OF _____, 20____.
24

25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:

**Certification Pursuant to
Commercial Division Rule 202.20-f**

I, P. Kent Correll, pursuant to Commercial Division Rule 202.20-f, certify that I, on behalf of defendant Wayne LaPierre, attempted to meet and confer with counsel for Peter Brownell on June 30, 2022, but Mr. Brownell did not respond to my request.

Additionally, I wrote to all counsel of record on July 1, 2022, informing them that I intended to join in the NRA's application to Judge Cohen and asking that counsel please "let me know whether you will consent to the relief requested insofar as Mr. LaPierre is concerned and, if not, when you would be available for a pre-motion consultation in accordance with Commercial Division Rule 202.20-f." The only response I received was from Seth Farber, counsel for Mr. Phillips, stating: "We consent to (i) and take no position on (ii)."

/s/ P. Kent Correll

P. Kent Correll
Counsel for Defendant Wayne LaPierre

Certification of Compliance with Word Count

I, P. Kent Correll, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing letter complies with the word count limit set forth in Commercial Division Rule 202.8-b. The letter contains 357 words, excluding exhibits. In preparing this certification, I relied on the word count of the word-processing system used to prepare this letter.

/s/ P. Kent Correll

P. Kent Correll
Counsel for Defendant Wayne LaPierre