

Mot. Seq. Nos. 28, 29 & 30

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKPEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

v.

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

Defendants.

Index No. 451625/2020

**AFFIRMATION OF
MONICA CONNELL
IN OPPOSITION TO
DEFENDANTS' MOTIONS
TO DISMISS THE
SECOND AMENDED
VERIFIED COMPLAINT**

Monica Connell, an attorney duly admitted to practice before the Courts of this State, hereby affirms the following under the penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General and Senior Counsel in the Enforcement Section of the Charities Bureau of the Office of the New York State Attorney General ("OAG" or "Attorney General").
2. I submit this affirmation in opposition to Defendants National Rifle Association of America, Inc. ("NRA"), Wayne LaPierre, and Jonathan Frazer's motions to dismiss the Second Amended Verified Complaint in this Action.
3. Attached as Exhibit A is a true and correct copy of Ch. 831, 1966, *Bill Jacket*, part of the Legislative History of Section 8-1.4 of the Estates, Powers & Trusts Law ("EPTL").
4. Attached as Exhibit B is true and correct copy of Julius Greenfield, McKinney's EPTL § 8-1.4, *Practice Commentaries* (West 1968).

5. Attached as Exhibit C is a true and correct copy of the Memorandum of State Department of Law, McKinney's 1966 Session Laws of New York, vol. 2 at 2928 (189th Session – 1966)

6. Attached as Exhibit D is a true and correct copy of the Attorney General's complaint in *People ex rel. James v. Diocese of Buffalo*, Index No. 452354/2020. The Complaint alleges that, for nearly two decades, the Diocese of Buffalo—through conduct of its senior leadership—failed to fulfill its responsibility to address and prevent the sexual abuse of minors by clergy. In the Complaint, the Attorney General asserted a claim pursuant to EPTL§ 8-1.4, seeking injunctive relief that included the appointment of a compliance auditor to “monitor and audit” for a period of five years the Diocese's compliance with revised policies and procedures that the Complaint sought to implement. (Ex. D ¶¶ 735-741 & Prayer for Relief ¶ 2.)

7. Attached as Exhibit E is a true and correct copy of the Decision and So Ordered Amended Consent Decree in *The Committee to Save Cooper Union, Inc. v. Board of Trustees of the Cooper Union for the Advancement of Science and Art*, 155185/2014 (“Cooper Union”). In the Cooper Union case, the Attorney General's Office investigated the finances and management of Cooper Union and facilitated a resolution, embodied in a consent decree, that aimed to, among other things, implement transparency and monitoring in Cooper Union's management and finances and reform Cooper Union's internal governance. Justice Bannon issued a decision approving the consent decree, which, among other things, called for the appointment of an independent financial monitor. She found that such appointment was one reform that would “ensure better governance and financial planning going forward.” (Ex. E at 22.) As a result, the Court so-ordered the consent decree providing for such a monitor. (*Id.* at 33-35, 47.)

8. Attached as Exhibit F is a true and correct copy of a letter agreement entered into between the Attorney General and the Metropolitan Council on Jewish Poverty (the “Met Council”), dated December 19, 2013. The Office of the Attorney General had filed felony complaints against the Met Council’s former Chief Executive Officer and former insurance provider, charging them with theft of charitable assets over the course of two decades. Additionally, the Charities Bureau, acting pursuant to the authority of New York’s Not-for-Profit Corporations Law (“N-PCL”) and the EPTL, investigated the adequacy of the Met Council’s governance processes and internal controls to prevent such large-scale misappropriation and waste of charitable assets. Based on the investigation, the Charities Bureau determined that the Met Council had failed to adopt several critical processes and controls which could have mitigated or avoided the loss of its charitable funds. In the letter agreement, the parties agreed to conclude the investigation on terms that included reforming the Met Council’s governance policies and procedures, retention of a new auditor, and the appointment of an independent monitor to review, among other things, Met Council’s compliance with the letter agreement and its other legal and ethical obligations. (Ex. F at 4-5, 7-10.)

9. Attached as Exhibit G is a true and correct copy of the Attorney General’s Assurance of Discontinuance (the “Assurance”) with the Richenthal Foundation, David Richenthal and Peter Graham, No. 18-034, dated April 25, 2018. The Assurance followed an investigation conducted by the Office of the Attorney General pursuant to Section 8-1.4 of the EPTL and Section 63(12) of the Executive Law related to the Richenthal Foundation’s failure to properly administer the charitable assets entrusted to their care by, among other things, permitting the waste of the Foundation’s assets. Examples of waste that the investigation uncovered included improper travel and entertainment expenses incurred by the Foundation that

were either unrelated to the Foundation's business or were excessive and not properly authorized by the Foundation's board. They also included improper reimbursements for personal expenses, and related party transactions that did not comply with requirements under New York law. In the Assurance, the Richenthal Foundation agreed to expand its board of directors, with all new directors only being seated if the Attorney General did not object, to the imposition of new policies and procedures, including a cap on travel and entertainment expenses, as well as to making an annual report detailing its compliance with the Assurance. (Ex. G at 11-16, ¶¶ 26-27.)

10. Attached as Exhibit H is a true and correct copy of the Attorney General's Assurance of Discontinuance with the Prospect Park Nursing Home, Inc. d/b/a Integral Guardianship Services, ("Integral"), No. 15-231, dated December 31, 2015. Acting pursuant to Section 8-1.4 of the EPTL, the N-PCL, and the Executive Law, the Attorney General investigated Integral's practices and found that it had failed to meet some of the most basic governance obligations of a not-for-profit organization. The Attorney General found, among other things, that Integral engaged in related party transactions without the requisite board review and approval, and gave a series of loans to various executives that were not made in accordance with the N-PCL. In the settlement with the Attorney General, Integral agreed, among other things, to (i) retain a third-party management consultant to recommend reforms to Integral's policies and procedures and issue a report subject to the Attorney General's review and approval and (ii) hire a compliance officer, subject to the Attorney General's approval, to "oversee and

evaluate compliance with the management consultant's recommendations and this assurance" as well as to provide reports to the Attorney General. (Ex. H at 7-9, ¶¶ 22-23.)

11. Attached as Exhibit I is a true and correct copy of the Attorney General's Assurance of Discontinuance (the "Assurance") with the PSCH, Inc. ("PSCH") and Foundation for Supporters of the Disabled ("FSD"), No. 08-109, dated September 11, 2008. The Attorney General opened an investigation, which focused on complaints that the compensation paid to PSCH's president and chief executive officer was excessive and that PSCH's Board of Directors failed to properly administer charitable assets. The investigation found, among other things, that the executive's total compensation package was excessive, the executive improperly used PSCH's corporate credit card for thousands of dollars of personal charges that he misrepresented as business expenses, that PSCH's Board failed to develop reasonable procedures for evaluating the executive's total salary, and that it failed to properly administer charitable assets by failing to ensure that PSCH had proper procedures in place for use of its corporate credit card. In the Assurance, PSCH agreed to make significant changes to its policies and procedures, form new Board committees, and institute other reforms, as well as to subject itself to monitoring by the Attorney General that included providing copies of all board minutes and resolutions to the Attorney General. (Ex. I at 19-26, 28-29, ¶¶ 61-83, 95.)

12. Attached as Exhibit J is a true and correct copy of the Complaint in *People v. Moore*, Index No. 401004-12, dated May 3, 2012.

Dated: New York, New York
July 13, 2022

/s/ Monica Connell

Monica Connell