

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

**NOTICE OF JOINDER IN
THE NRA'S MOTION TO
EXCLUDE EVIDENCE
FROM JEFFREY
TENENBAUM**

Motion Sequence No. 050

PLEASE TAKE NOTICE Defendant Wilson H. Phillips ("Mr. Phillips") joins in and incorporates by reference the legal arguments in The National Rifle Association Of America's Motion To Exclude Evidence From Jeffrey Tenenbaum and the motion's supporting papers (Mot. Seq. 50). Mr. Phillips files this joinder under this Court's Part 3 – Practices and Procedures, VI.D.

Mr. Tenenbaum should be precluded from testifying at trial and all evidence related to his analysis and opinion excluded. Mr. Tenenbaum's Expert Report¹ and proffered testimony plainly usurps the role of the factfinder and the Court and should be excluded on that basis alone. (*See Portelli v Garcia*, 195 Misc 2d 217, 222 [Sup Ct, Nassau County 2003] ["Where the opinions of experts intrude on the province of the court or jury, such opinions should be rejected."]); (*see also Singh v Kolcaj Realty Corp.*, 283 A.D.2d 350, 351 [1st Dept 2001] ["[T]he opinions of experts, which intrude on the province of the jury to draw inferences and conclusions, are both unnecessary

¹ Expert Report Of Jeffrey S. Tenenbaum dated September 16, 2022, is referred to as the "Report" and attached as Ex. A to the Affirmation In Support Of Defendant The National Rifle Association Of America's Motion To Exclude Evidence From Jeffrey Tenenbaum.

and improper.”)).

Mr. Tenenbaum is a “nonprofit attorney” and his expertise relates to the law applicable to nonprofit organizations and their officers. *See* Report at 1-2. But expert testimony on the law is wholly improper; it is exclusively the Court’s role to instruct the jury on that subject. “It is axiomatic that an expert is not permitted to provide legal opinions, legal conclusions, or interpret legal terms; those roles fall solely within the province of the court.” (*Miriam Osborn Mem. Home Ass’n. v Assessor of City of Rye*, 7 Misc. 3d 1004(A) [Sup Ct, Westchester County 2005]). “[T]he determination as to the applicability and meaning of the law, including whether a particular condition or omission was in violation of a statute or regulation, is the province of the court.” (*Maldonado v Flintlock Const. Services, LLC*, 32 Misc. 3d 1209(A) [Sup Ct, Queens County 2011] [citations omitted]). “Likewise, the interpretation of a statute is purely a question of law, and is the responsibility of the court, not the trier of facts.” (*Colon v Rent-A-Ctr., Inc.*, 276 AD2d 58, 61 [1st Dept 2000]).

Based on the Report, the Attorney General of the State of New York (“NYAG”) also proposes that Mr. Tenenbaum offer expert testimony on whether the evidence in the record establishes the violations of law that the NYAG alleges. *See* Report 1-2, 4-5. But that proffered testimony is nothing more than the application of the law to the facts, which is the role of the fact finder (the jury or, as to some claims, the Court), not an expert witness. “[W]hether a violation [of law] has occurred is a legal conclusion either for the court to draw based on the undisputed relevant evidence or for the fact finder at trial to draw after determining the facts from conflicting relevant evidence and applying the law according to the court’s instructions.” (*Flores v Infrastructure Repair Serv., LLC*, 52 Misc. 3d 664, 667 [Sup Ct, NY County 2015]). Further, “[a]bsent [juror] inability or incompetence, the opinions of experts, which intrude on the province of the jury to

draw inferences and conclusions, are both unnecessary and improper.” (*Kulak v. Nationwide Mut. Ins. Co.*, 40 N.Y.2d 140, 148 [1976]). Likewise, “expert witnesses should not ... offer opinion as to the legal obligations of parties ...; that is an issue to be determined by the trial court. Expert opinion as to a legal conclusion is impermissible.” (*Russo v Feder, Kaszovitz, Isaacson, Weber, Skala & Bass, LLP*, 301 AD2d 63, 69 [1st Dept 2002] [alteration in original]).

For these reasons, and the reasons stated in the Memorandum of Law in Support of Defendant The National Rifle Association Of America’s Motion To Exclude Evidence From Jeffrey Tenenbaum, which Mr. Phillips joins in full, the testimony of Mr. Tenenbaum should be excluded.

Dated: March 22, 2023
New York, New York

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CERTIFICATE OF COMPLIANCE

1. I am an attorney at the law firm of Winston & Strawn LLP, I am admitted to practice in the State of Texas and am admitted *pro hac vice* in this action and have appeared on behalf of Defendant Wilson Phillips in this action.

2. This Joinder in Defendant The National Rifle Association Of America's Motion To Exclude Evidence From Jeffrey Tenenbaum was prepared in the processing system Microsoft Word, with Times New Roman typeface, 12-point font.

3. Pursuant to the Rules of the Commercial Division of the Supreme Court (22 NYCRR § 202.70(g)), I certify that this joinder complies with the word count limit set out in Rule 17, as it contains 710 words (excluding the parts exempted by Rule 17).

Dated: March 22, 2023
Dallas, Texas

By: /s/ Rebecca Loegering
Rebecca Loegering