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EXPERT REPORT OF DANIEL L. KURTZ, ESQ.

*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., Wayne LaPierre, Wilson Phillips, John Frazer, and Joshua Powell,
Index No. 451625/2020 (N.Y. Sup.)*

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1. I have been engaged by Brewer Attorneys & Counselors (the “Brewer Firm”) to provide expert testimony and a written report in connection with the Brewer Firm’s representation of The National Rifle Association of America, Inc. (“NRA” or the “Defendant”) in the action titled *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., Wayne Lapierre, Wilson Phillips, John Frazer and Joshua Powell*, Index No. 451625/2020 (N.Y. Sup.). The action is hereinafter referred to as the “Litigation.”

2. I do not provide, nor have I previously provided, services to the Defendant or any of the other defendants in the Litigation. I do not have, nor have I had, any business relationship with any of them either.

3. I am being compensated at the hourly rate of \$1,150 per hour to provide expert consulting services and written analysis, and, if necessary, at \$1,500 per hour to provide testimony in connection with the Brewer Firm’s representation of the Defendant. In addition, my out-of-pocket expenses are reimbursed as part of the engagement. I am being assisted on the engagement by a Pryor Cashman partner, Shveta Kakar, whose hourly rate is \$865. My compensation is not dependent on the outcome of the Litigation, or the opinions expressed in this report or testimony at trial.

I. BACKGROUND AND QUALIFICATIONS

4. I am a Partner and Co-Chair of the Exempt Organizations Practice Group in the New York office of the law firm of Pryor Cashman LLP. My practice has encompassed national and international public charities; educational institutions; health care, arts and cultural organizations; religious organizations; private foundations; trade and professional associations; and social clubs in corporate, litigation, tax, regulatory and other matters.

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5. I have focused my practice on the representation of nonprofit organizations since 1985 in the following positions: Partner and the Practice Group Co-Leader of the Exempt Organizations Practice Group in the New York office of Davis Wright Tremaine LLP (2015-2016); Partner, and Leader of the Exempt Organizations Group, Skadden, Arps, Slate, Meagher & Flom LLP (2008-2015); Partner, Holland & Knight LLP (2001-2008); Partner, Gilbert, Segall and Young LLP (1998-2001) (firm combined with Holland & Knight in 2001); and Partner, Lankenau Kovner Kurtz & Outten, LLP (1985-1998).

6. From 1979 through 1985, I was the Assistant Attorney General-In-Charge of the Charities Bureau of the Office of the Attorney General, State of New York, the principal legal officer in the New York State Attorney General's office charged with overseeing charitable organizations for the State of New York.

7. In 1987, I wrote Board Liability: Guide for Nonprofit Directors under the auspices of the New York City Bar Association. I am also a co-author of a leading treatise: New York Nonprofit Law and Practice published by Lexis Nexis and have written several editions of Managing Conflicts of Interest for Board Source. I have also authored numerous articles and conducted continuing legal education programs, primarily on nonprofit governance.

8. In addition to my practice, I have been an active leader of bar associations in my area of practice, having chaired the American Bar Association Subcommittee on revising the Model Nonprofit Corporation Act; the New York State Bar Association Committee on Nonprofit Organizations; and the New York City Bar Association Committee on Nonprofit Organizations.

9. I am an original member of *The Forum*, an association of legal scholars and leading practitioners in the nonprofit sector. We meet periodically during the year at forums

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organized by the NYU Center for Law and Philanthropy and each of us takes a turn at presenting an original paper.

10. I also personally serve on the Board of Directors of three foundations, including as one of four directors on the Board of the Howard Gilman Foundation which is the largest private funder of performing arts in New York City. I have also been a board member of seven other nonprofit organizations during my career.

11. I have been an expert witness on two occasions in the last four years: (i) in a litigation in Israel, in Jerusalem District Court, Civil Case 41759-04-18, Free World Ltd. v. Hadassah the Women's Zionist Organization of America Inc. and others, on restricted donations to a charity and the return of donations, where I submitted a written report; and (ii) in a state court litigation in New York Supreme Court, La Scuola D'Italia Guglielmo Macroni v. Gates Capital Corp. et al., Index No. 650419/2018 (N.Y. Sup.) on the purchase and sale of assets of nonprofits pursuant to New York Not-For-Profit Corporation Law ("N-PCL") where I provided a written report on the legal requirements that must be satisfied for the purchase and sale of assets of nonprofits in New York, the process for approving such transactions, and the standard of care that attorneys must meet in representing and advising not-for-profit clients with respect to such transactions. Other than in these cases, I have not testified as an expert at trial or by deposition during the previous four years.

12. Based on my decades of experience as a practitioner advising a variety of nonprofit institutions, as well as my experience in the Office of the New York Attorney General ("NYAG") office as the chief regulator of charities, and my personal service on numerous nonprofit boards, I am intimately familiar with nonprofit governance, internal controls and regulatory reporting and routinely counsel nonprofit Boards and have conducted Board trainings

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on the same. I am considered to be one of the leading authorities on nonprofit governance in New York.

13. My curriculum vitae with my qualifications, including all publications I authored in the previous 10 years, is set forth in Exhibit A attached hereto.

14. This Report is based on my professional experience and my independent examination of the facts and circumstances related to this matter. In preparing this report, I have relied on my knowledge and expertise in the field of not-for-profit organizations, my review of the Second Amended Verified Complaint and various materials in the Litigation. Such documents are identified in the list attached hereto as Exhibit B.

II. FACTUAL BACKGROUND

15. In May 2022, the NYAG filed the Second Amended Verified Complaint in this Litigation against the NRA and the individual defendants (the “Complaint”) ([NYSCEF Doc. No. 646](#)), asserting the following claims against the NRA: (1) a breach of Section 8-1.4 of the Estates, Powers and Trusts Laws of New York (“EPTL”) for failure to properly administer charitable assets and seeking injunctive relief, including the appointment of an independent compliance monitor with responsibility to report to the NYAG and Court and the appointment of a governance expert to advise the Court of reforms necessary to the governance of the NRA (COUNT I) (Compl. ¶¶635-43); (2) failure to follow statutory requirements governing related party transactions set forth in New York Not-For-Profit Corporation Law (“N-PCL”) §§ 112(a)(10), 715(f) and EPTL § 8-1.9(c)(4) and requesting the Court to enjoin, void or rescind the unlawful related party transactions and award damages (COUNT XIII) (Compl. ¶¶690-96); (3) violation of the whistleblower protections of N-PCL § 715-b and EPTL § 8-1.9 and requesting the removal for cause of each officer, director and trustee who violated the whistleblower policy

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(COUNT XIV) (Compl. ¶¶697-701); and (4) violation of Section 172-(d)(1) of New York's Executive Law for making false and misleading statements and omissions in the annual reports (Form 990) that the NRA files with the NYAG and requesting that, pursuant to Section 175(d)(2) of the Executive Law, the NRA be enjoined from soliciting or collecting funds on behalf of any charitable organization operating in New York State (COUNT XV) (Compl. ¶¶702-04).

16. Following a jury trial on April 3, 2024 ("Phase I"), the jury entered a verdict, finding, among other things, that:

(1) The NRA failed to properly administer the NRA or its charitable assets under EPTL § 8-1.4 between March 14, 2014, and May 2, 2022. See Jury Verdict Sheet, Q. I.1 ([NYSCEF Doc. No. 3212](#)).

(2) Ten related party transactions occurred between March 20, 2017, and May 2, 2022, which were not properly authorized in advance by the NRA Board or authorized committee; although eight of the ten transactions were ratified by the NRA Board of Directors/authorized committee, two of them were not: (a) Hair and Make-Up Expenses for Susan LaPierre; and (b) Payments for speaking engagements for Board Member David Keene. Id. at Q. III.7.¹

(3) The NRA violated N-PCL § 715-b by failing to adopt a whistleblower policy that complied with the law between March 20, 2017 and January 22, 2020 and that the NRA violated N-PCL § 715-b by failing to evaluate whistleblower complaints or by failing to ensure compliance by permitting the eight individuals listed on the jury verdict sheet to suffer intimidation, harassment, discrimination or other retaliation to discourage reporting or improper conduct at any time between March 20, 2017 and May 2, 2022. Id. at Q. V.9.

¹ The jury also found that Defendant Wilson Phillips's post-employment contract was a related party transaction which was not authorized in advance or ratified later. See Jury Verdict Sheet, Q. III.6(a). However, the jury also found that that the NRA did not suffer any damages as a result of this violation by Defendant Phillips. Id. at Q. III.6(d).

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(4) The NRA's annual CHAR500 filings, which included the IRS Forms 990 between March 20, 2017, and May 2, 2022, contained statement(s) or omission(s) which were materially false. Id. at Q. VI.10(a).

17. Phase II as I understand it, which is now before this Court, is, whether, given the jury verdict, the relief sought by the NYAG is warranted today. In my opinion, for all of the reasons set forth below, it is not.

III. SUMMARY OF OPINION

18. At the outset, I would like to make clear that I am not opining on what happened in the past. As noted by the Bankruptcy Court, there is “evidence of the NRA’s past misconduct.” See Order Granting Motions to Dismiss, In re National Rifle Association of America and Sea Girt LLC, Case No. 21-30085 (HDH), at 33 (Bankr. N.D. Tex. May 11, 2021) (the “Bankruptcy Order”).

19. I am also not opining on the sufficiency of the course corrective measures the NRA took between 2017 and 2022 although as the Bankruptcy Court noted, “the NRA has made progress since 2017 with its course correction” and “[w]hether it is yet complete or not, there has been more disclosure and self-reporting since 2017.” Id. at 35.

20. The focus of my opinion, rather, is where the NRA is as an institution **today** – what governance changes, processes and internal controls have been instituted – and whether, under the circumstances, the relief requested pursuant to Counts I, XIII, XIV and XV is warranted.

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IV. OPINION

COUNT I. The Improper Administration of Charitable Assets and Request for Appointment of a Compliance Monitor.

21. The jury found that the NRA had improperly administered the organization or its charitable assets² at some time between March 20, 2014, and May 2, 2022. See Jury Verdict Sheet, Q. I.1.

22. Unfortunately, it is impossible to know which specific transactions or occurrences the jury deemed violative of EPTL § 8-1.4. From what I understand, however, the NRA has addressed, as discussed below, past issues as part of its course correction.

23. As explained by the Bankruptcy Court, “[i]n July 2018, several whistleblowers came forward . . . and presented a memo to the NRA Audit Committee regarding their top concerns (the “Whistleblower Memo”). That list included concerns related to (1) financial conflicts of interest of senior management and board members, (2) senior management override of internal controls relating to, among other things, accounts payable procedures, travel and expense reporting, and procurement/contracts policy, (3) management making decisions in the best interest of vendors instead of the NRA, (4) vague and deceptive billing practices of vendors, (5) improper reimbursement for apartments and living expenses of certain employees, and (6) lack of control over vehicle leases obtained by senior management.” Bankruptcy Order at 4-5.

² Although this Court has already concluded that the NRA is a charitable organization and that conclusion informs ten of the 15 Causes of Action asserted by the Attorney General, it should be noted that the NRA is classified as a “social welfare organization” by the Internal Revenue Service (“IRS”) described in Internal Revenue Code (“IRC”) § 501(c)(4). Part V, Q. 7 of the IRS Form 990 has a series of questions for “[o]rganizations that may receive deductible contributions under [IRC] Section 170(c).” Those questions are not answered by the NRA in any of its Forms 990, because the NRA receives no such deductible contributions from the general public. In other words, the NRA does not receive funds intended by its donors to be used for charitable purposes. In its Form 990 for year-ended 2022, its last available filing, which is attached hereto as Exhibit 1, the NRA reported revenues of \$211,332,026. In that year, it received contributions of \$6,544,538 from a related organization classified as a charity, barely 3% of its resources – those are the charitable funds. See Ex. 1, Schedule R, Part V (transactions with related organizations). Accordingly, treating the NRA as if it were indisputably a wholly charitable organization, subject to all of the safeguards in handling charitable funds, seems to raise questions.

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24. “Following the presentation of the Whistleblower Memo to the Audit Committee, the NRA took several actions, including examining related party transactions and reviewing vendor contracts. As a result of this review process, the NRA required the inclusion of specific metrics in all contracts and improved documentation and recordkeeping. One of the more significant actions taken in response to the Whistleblower Memo was to send letters to the NRA’s vendors notifying them of the rules regarding proper invoicing. While most vendors complied with these new measures, some did not. As a result, some contracts with vendors were re-negotiated, and some were terminated.” Id. at 5.

25. And, in fact, as Sonya Rowling, now the NRA’s Chief Financial Officer, and Michael Erstling, Director of Budget and Financial Analysis, testified, “**the concerns they expressed in the 2017 Whistleblower Memo are no longer concerns.**” Id. at 35 (emphasis added).

26. Indeed, as the Bankruptcy Court characterized it, “the NRA now understands the importance of compliance.” Id.

27. Apart from addressing these issues as part of the course correction, the NRA more recently has instituted significant changes to its operations, reporting and compliance regimes.

28. Sonya Rowling, who was one of the authors of the Whistleblower Memo and the NRA’s Director of Financial Reporting and Accounting Operations in 2019 (see **Exhibit 2** (NRA Organizational Chart) attached hereto), was promoted to become the NRA’s Chief Financial Officer and Treasurer. See Bankruptcy Order at 35; see also **Exhibit 3** (Relevant Page of the Form 990 for year-ended 2020, Part II) attached hereto.

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29. Described by the Bankruptcy Court as “a champion of compliance” (Bankruptcy Order at 35), Ms. Rowling **conducted a Risk Assessment and Loss Exposure Analysis in 2023 based on the COSO framework.**

30. COSO is the Committee of Sponsoring Organizations of the Treadway Commission, a private sector initiative jointly sponsored and funded by the American Accounting Association (AAA), American Institute of Certified Public Accountants (AICPA), Financial Executives International (FEI), Institute of Management Accountants (IMA) and the Institute of Internal Auditors (IIA).

31. The COSO framework is used around the world and is recognized as the leading framework for designing, implementing and conducting internal controls and assessing the effectiveness of internal controls. The COSO framework focuses on five integrated components of internal controls: control environment, risk assessment, control activities, information and communication and monitoring activities.³

32. The results of the Risk Assessment and Loss Exposure Analysis conducted are attached hereto as **Exhibit 4** and covered 19 Identified Risk Components from Travel and Business Expenses, Excess Benefits, Related Party Transactions and Vendor Contracts to Federal and State Campaign Finance Compliance. So, for example, with respect to Vendor Contracts, the Risk Identified was first mapped to Existing Internal Controls. This includes: (i) Identification of the corresponding internal control (applicable policies and processes); (ii) Verification and Substantiation (how vendors are verified and substantiated); (iii) Reporting (how Vendor Contracts and payments are recorded); (iv) Monitoring (how Vendor Contracts and payments are monitored

³ See COSO Framework: Executive Summary available at https://www.coso.org/_files/ugd/3059fc_1df7d5dd38074006bce8fdf621a942cf.pdf.

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and tracked internally); and (v) Training (what training is provided to employees and the Board).

See Ex. 4 at p.3.

33. Once that is done, individual(s) are assigned responsibility to assess controls. In the case of Vendor Contracts, the Senior Executive Financial Strategist was assigned to assess the effectiveness of the internal control as well as the likelihood of noncompliance, and testing is done to see how it well it works in practice. Id. For example, 10 contracts with associated invoices with annual expend over \$100,000 were tested to verify that proper due diligence was performed in accordance with applicable policies and procedures, which included identifying any related party or conflict of interest transactions, and to verify that payments were made in accordance with contract terms and recorded to the appropriate accounts and the services were provided and that the true beneficiary was actually identified in the contract. A summary of the results of the Vendor Contracts testing is attached hereto as **Exhibit 5**. Additional testing is then scheduled as deemed necessary. See Ex. 4.

34. Separately, the **external auditors** engaged by the NRA in 2019 – Aprio (f/k/a/ Aaronson and Associates) – and the head of their Audit Team conducted their own independent assessment of the internal controls and for the first time since 2019 **did not issue a management letter for year-ended 2023, finding no deficiencies in the controls**. See **Exhibit 6** (Aprio’s April 10, 2024, Presentation to the Audit Committee) attached hereto at p.11.

35. **On January 11, 2024, the NRA also hired David Medrano as Director of Internal Audit and Compliance**, a seasoned licensed professional with operational management experience in the areas of audit, accounting, corporate finance, risk management and compliance. See **Exhibit 7** (David Medrano’s Offer Letter and Resume) attached hereto.

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36. On August 24, 2023, the NRA hired Robert Mensinger as **Managing Director, Compliance**. See **Exhibit 8** (Robert Mensinger's Employment Agreement and Resume) attached hereto. Mr. Medrano reports to him. See **Exhibit 9** (Relevant Pages of David Medrano's New Hire Checklist) at pp.1, 4 attached hereto.

37. Mr. Mensinger has extensive government and corporate experience in directing investigative, regulatory and compliance programs, having been the Legal Director of Business Integrity at Kellogg Brown and Root ("KBR"), Senior Regulatory Compliance Counsel for CEVA Logistics, Inc., a Special Agent in the Office of the Inspector General of the U.S. Small Business Administration, a Resident Agent in Charge in the Office of the Inspector General of the U.S. Department of Defense, and a Senior Special Agent and Resident Agent in Charge in the U.S. Department of Treasury and Homeland Security and U.S. Customs Services. See Ex. 8 at pp.6-7.

38. The NRA membership recently approved Mr. Mensinger's appointment as the Chief Compliance Officer, and a vote to confirm his appointment by the Board of Directors occurred earlier this month.⁴ The Bylaws were also amended to create a Chief Compliance Officer position. See **Exhibit 10** (Relevant Pages of the Report of the NRA Bylaws and Resolutions Committee dated April 17, 2023 at p.140)⁵ and **Exhibit 11** (NRA 2024 Board of Director Election Results) ("[T]he members voted overwhelmingly to amend the bylaws to create a Chief Compliance Officer position, to be filled by the Board") attached hereto. Mr. Mensinger reports

⁴ A news article announcing the Board's approval of Mr. Mensinger's appointment as Chief Compliance Officer is available at <https://news.bloomberglaw.com/business-and-practice/nras-frazer-out-as-top-legal-advisor-amid-leadership-overhaul>.

⁵ "The Committee discussed its recommendation to the Board to approve putting before the membership for a vote the attached proposed bvlaw amendment to add a Chief Compliance Officer. This recommendation was passed by the Committee on January 6, 2023 and notice was given to the Board in the Committee's report at the January 2023 Board meeting. . . . MOVED, That the Committee recommends to the Board of Directors that the proposed amendment to the Bylaws adding a Chief Compliance Officer (as printed in the Committee report) be recommended for adoption by the members on the 2024 mail ballot."

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directly to the Board. See Ex. 10 at pp.146-47 (“The Chief Compliance Officer shall make regular reports and recommendations regarding compliance matters to the Board of Directors and to such committees as may be appropriate.”).

39. The NRA’s policies and procedures are set forth in two documents: the NRA Policy Manual and the NRA Employee Handbook. Compl. ¶101. As part of the changes Mr. Mensinger has instituted, the NRA now conducts various trainings for its Board and staff on its policies and procedures:

- New hires must sign and return a Statement of Receipt for the Employee Handbook (see Ex. 9 at p.2), which sets forth the NRA’s policies and procedures on employee selection, compensation, time off, work environmental standards, and insurance and benefits.
- Staff are now required to participate in Corporate Compliance and Ethics Week and expected to attend refresher training seminars to address compliance issues regarding NRA policies on corporate ethics, contracting and purchasing policies. See Exhibit 12 attached hereto (Corporate Compliance And Ethics Week and Staff Refresher Seminar).
- The Board receives training on Compliance Basics which includes reiterating for Board members the NRA’s Statement of Corporate Ethics and educating them on:
 - Key Compliance Obligations (state and federal laws as well as the NRA’s bylaws and internal controls).
 - Conflicts of Interest and Related Party Transactions policies and procedures.
 - Spending and Procurement policies and procedures.
 - Asset Protection Controls
 - Travel & Expense Reimbursement policies and procedures

See Exhibit 13 (NRA Board of Directors Compliance Basics Training) attached hereto.

40. In addition to all these changes, the “tone at the top” is often considered to permeate an entire organization and competent and ethical leadership is a prerequisite for solid

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corporate governance. Mr. LaPierre's outsized role and influence at the NRA is well documented and the "tone at the top" was set by him. As the Complaint alleges, "LaPierre, together with his direct reports, including Defendants Phillips, Frazer and Powell, instituted a culture of self-dealing, mismanagement, and negligent oversight at the NRA." Compl. ¶142.

41. Mr. Phillips served as *ex officio* Director, Treasurer and Chief Financial Officer and a key person at the NRA since 1993. In 2018, he retired. Id. ¶22.

42. Mr. Powell, who was also a key person and held the positions of Chief of Staff, Executive Director of General Operations and Senior Strategist, was fired in January 2020. Id. ¶21.

43. Mr. LaPierre resigned from the NRA as of January 31, 2024⁶; this is undoubtedly the most consequential governance change at the NRA in three decades.

44. Mr. Frazer, who served as the NRA's General Counsel since 2015 (id. ¶23), is no longer General Counsel as of May 22, 2024.⁷

45. Indeed, as Jeffrey S. Tenenbaum, among the Attorney General's own experts, opines in his Rebuttal Report, "[i]f the NRA was serious about its course correction and establishing a culture of compliance, it would have removed Wayne LaPierre a long time ago. In my experience, the removal of executives and officers who permitted or committed the alleged violations and overrides of the nonprofit's internal controls is the most efficient, effective, and expedient course correction measure a nonprofit can take." Rebuttal Report of Jeffrey S.

⁶ The NRA's Head of General Operations served in Mr. LaPierre's stead until Doug Hamlin was elected as Mr. LaPierre's formal replacement at the NRA's annual membership meeting in May 2024. See footnote 4, supra.

⁷ Id.

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Tenenbaum dated October 7, 2022, at 10. “Setting the tone at the top is very important to establishing a culture of compliance.” Id.

46. Not only are Messrs. LaPierre, Phillips and Powell no longer there, and not only is Mr. Frazer no longer the NRA’s General Counsel⁸, but the NRA Board has also gone through a significant change. The NRA Board is comprised of 76 individuals. The NRA Board is staggered: except for two or three directors who serve shorter terms, directors serve a three-year term, with one-third up for re-election each year.

47. In 2022, five of the incumbent directors were not re-elected, with eight new people added to the Board. Compare NRA Board Directory 2021-2022 at p.4 (list of directors whose terms expired in 2022), with NRA Board Directory 2022-2023 at p.4 (list of directors whose terms expire in 2025).⁹

48. In 2023, five of the incumbent directors were not elected, with five new people added to the Board. Compare NRA Board Directory 2022-2023 at p.4 (list of directors whose terms expired in 2023), with NRA Board Directory 2023-2024 at p.4 (list of directors whose terms expire in 2026).¹⁰

49. In 2024, six incumbents were not re-elected to the Board and six new people were added. Compare NRA Board Directory 2023-2024 at p.4 (list of directors whose terms expire

⁸ He remains as Secretary, but this is largely a ministerial position.

⁹ See Exhibit 14 (relevant directory pages) attached hereto. Incumbents Mark Geist, Karl Malone, Oliver North, Bart Skelton and Donald Young were not re-elected while Isaac Demarest, Steven Dulan, Al Hammond, Charles Hiltunen, Mitzy McCorvey, David Norcross, Danny Stowers and Cathy Wright were newly elected to the Board.

¹⁰ See Exhibit 15 (relevant directory pages) attached hereto. Incumbents James Chapman, Allan Cors, Graham Hill, Richard Figueroa and Phillip Journey were not re-elected to the Board, and David Raney, Amanda Suffecool, Bruce Widener, Eb Wilkinson and Amy Lovato were added to the Board.

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in 2024), with list of directors elected in November 2023 (list of directors whose terms expire in 2027).¹¹

50. Evidently, the Board composition has significantly changed in this three-year-period, with directors leaving and new ones joining the Board each year.

51. There is also “robust debate,” and Board elections are “contentious,” with directors being elected from the floor as well and not necessarily only those recommended by the Nominating Committee. See Relevant Pages of May 21, 2024, Testimony of Robert Mensinger, attached hereto as Exhibit 17, at 134:9-135:3.

Q. With respect to the EVP position, did the board consider multiple candidates?

A. Two candidates.

Q. Were both of those candidates recommended by the nominating committee?

A. Just one.

Q. Did that candidate win the election?

A. They did not. The other candidate that was nominated from the floor was elected as the EVP.

Q. Was that also true with respect to the vice president positions?

A. Vice president positions, yes, I believe Mr. Wade was one that was nominated and didn't get the position. Mr. King was the other – yes, I believe that's correct.

Q. Were the votes on these positions close?

A. Yes, they were close.

¹¹ See Exhibit 16 (relevant 2022-2023 directory pages and 2024 NRA Board of Directors Election Results) attached hereto. Incumbents Joel Friedman, Antonio Hernandez, David Keene, Kim Rhode, John Sigler and James Wallace were not re-elected to the Board, and Phillip Journey, Rocky Marshall, Jeffrey Knox, Craig Haggard, Dennis Fusaro and Susannah Kipke were added to the Board. Ms. Kipke was added for a two-year term.

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52. Notably, Phillip Journey and Rosco Marshall, who were elected in 2024, are among the dissident directors antagonistic to Mr. LaPierre; they testified on behalf of the New York Attorney General at the trial. This fact underscores that the NRA is serious about leadership change and that Mr. LaPierre is no longer influential. His departure signifies the end of an era at the NRA.

53. This leadership sea change at the NRA – which sets the tone – coupled with course corrective actions the NRA undertook in previous years and the seismic changes since 2022, demonstrate that the NRA, in fact, has instituted a “culture of compliance.”

54. Under the circumstances, a compliance monitor is not warranted.

55. The Attorney General’s request for a compliance monitor is based on past transgressions. Even in criminal cases – which this is not – “a monitor should never be imposed for punitive purposes.” See March 1, 2023, Revised Memorandum on Selection of Monitors in Criminal Division Matters (“DOJ Memo”), attached hereto as **Exhibit 18**, at p.2.¹²

56. The NRA has instituted changes and it now has a Chief Compliance Officer as well as a Director of Internal Audit and Compliance.

57. It has also recently conducted a Risk Assessment and Loss Exposure Analysis, and its external auditors have independently tested the internal controls and found no deficiencies. See Ex. 4.

58. The DOJ Memo underscores the fact that a company’s remediation efforts – including enhanced compliance policies and programs – may obviate the need to impose an independent monitor and further directs prosecutors to favor the imposition of a monitor only

¹² This memo supplements the guidance provided by the memorandum entitled “Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations” issued by then-Acting Deputy Attorney General, Craig S. Morford (“Morford DOJ Memo”).

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where there is a demonstrated need for, and clear benefit to be derived from, a monitorship relative to the projected costs and burdens. See Ex. 18 at pp.2-3.

59. Among the factors to be weighed in assessing whether a monitor is needed, is “[w]hether at the time of the resolution and after a thorough risk assessment [which has been done here] the corporation has implemented an effective compliance program and sufficient internal controls to detect and prevent similar misconduct in the future.” Id. at p.2. And importantly, when – as is the case here – “a corporation’s compliance program and controls are demonstrated to be tested, effective, adequately resourced, and fully implemented at the time of resolution” the memo states that “a monitor may not be necessary.” Id. at p.3.

60. Besides the fact that current circumstances do not, therefore, warrant the appointment of a compliance monitor, this is also not the kind of case where the appointment of a compliance monitor is warranted.

61. “Significant use of independent compliance monitors began in the mid-1990s with settlements negotiated between federal criminal prosecutors and corporate defendants. Monitorship settlements became more common at the turn of the century with the collapse of Enron and other high profile cases of corporate misconduct.” See National Association of Attorneys General (“NAAG”), *Compliance Monitoring and State Attorney General Investigations: Issues In Appointment and Operation* (May 29, 2018) (footnote omitted).¹³

62. “During this time, state attorneys general were also using multistate investigations and settlements to reform corporate misconduct at an industry level. In 1998, 46 state attorneys general negotiated the Tobacco Master Settlement Agreement (MSA). . . . Another

¹³ Available at <https://www.naag.org/attorney-general-journal/compliance-monitoring-and-state-attorney-general-investigations-issues-in-appointment-and-operation/>.

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example was the 2002 Microsoft antitrust settlement with nine state attorneys general and the U.S. Department of Justice (DOJ), reforming Microsoft’s alleged anticompetitive conduct to create more competitive browser and software development markets.” Id.

63. “These industry-wide settlements required state attorneys general to devote significant resources to enforcement. . . . Accordingly, it was only a matter of time before state attorneys general incorporated the use of monitors into multistate settlements to supervise compliance with new industry-wide standards or complex executory terms imposed on individual companies.” Id. Other examples include The National Mortgage Settlement (NMS) with five of the largest banks, following the national housing market crash, where the broad scope of the settlement – with mortgage servicers that accounted for over half of the market and resulted in over \$50 billion in gross dollar relief to more than 640,000 families around the country – required banks to comply with over 300 servicing standards and involved enforcement of a new federal law and laws of 49 states, making the NMS “particularly suited to management by an external monitor.” Id.

64. This Litigation does not resemble these complex multi-state settlements to supervise compliance with new industry-wide standards where compliance monitors are typically needed.

65. And generally, it is the public interest that is at the heart of what is being protected when compliance monitors are appointed. For example, the NYAG had compliance monitors appointed to oversee the Brooklyn Catholic Diocese’s handling of clergy sexual abuse cases;¹⁴ to ensure remediation and compliance by the landlord in 62 rental properties in Syracuse

¹⁴ Available at <https://ag.ny.gov/press-release/2024/attorney-general-james-announces-agreement-brooklyn-catholic-diocese-mishandling>.

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involving lead poisoning of children;¹⁵ to oversee the health care operations of a nursing home where there had been extensive sexual assault and other mistreatment of residents;¹⁶ to oversee compliance in affordable housing plagued by unsafe and unhealthy conditions;¹⁷ to oversee relief for 46,000 service members and veterans who were defrauded by a national jewelry retailer;¹⁸ and to assure compliance by the Erie County Sheriff to follow procedures to address allegations of sexual misconduct between correction officers and incarcerated individuals,¹⁹ among others. This is consistent with what the Bankruptcy Court noted when the NYAG sought dissolution: there must be “harm or menace to the public welfare.” Bankruptcy Order at 28 (citation omitted).

66. Here, there is no injury to the public. As this Court has opined previously, “[t]he malfeasance alleged in the Complaint – if proven – is undoubtedly troubling, but the [NYAG] does not allege that the NRA’s mismanagement under LaPierre and others ‘has produced, or tends to produce, injury to the public.’” Decision and Order on Motions to Dismiss, People of the State of New York v. Nat. Rifle Ass’n of Am., Inc., et al., Index No. 451625/2020, at 24 (N.Y. Sup. March 2, 2022) ([NYSCEF Doc. No. 609](#)) (citation omitted). “The main victim of the NRA’s alleged dysfunction has been, according to the Complaint, the NRA and its members.” Id.

¹⁵ Available at <https://ag.ny.gov/press-release/2024/attorney-general-james-reaches-175000-settlement-syracuse-landlord-failing>.

¹⁶ Available at <https://ag.ny.gov/press-release/2024/attorney-general-james-secures-86-million-and-significant-reforms-long-island>.

¹⁷ Available at <https://ag.ny.gov/press-release/2017/ag-schneiderman-gov-cuomo-mayor-de-blasio-announce-settlement-major-nyc-landlord>.

¹⁸ Available at <https://ag.ny.gov/press-release/2022/attorney-general-james-and-ftc-recover-342-million-thousands-us-servicemembers>.

¹⁹ Available at <https://ag.ny.gov/press-release/2021/attorney-general-james-forces-erie-county-sheriff-address-rampant-sexual>.

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67. The appointment of a compliance monitor, in this case, therefore, is inappropriate.

68. As the DOJ guidance sets forth, there are two broad considerations that should guide the need and propriety of a monitor: “(1) the potential benefits that employing a monitor may have for a corporation and the public, and (2) the cost of a monitor and its impact on the operations of a corporation.” See Ex. 18 at p.2.

69. Here both considerations weigh against the appointment of a compliance monitor. There is no “benefit to the public.” And both the cost of a monitor and its impact on the operations of the NRA are likely to be substantial.

70. This Litigation has already resulted in a significant reduction in NRA membership and attendant member dues and contributions. The NYAG filed the first complaint in this Litigation in August 2020. Between 2020 and 2023, member dues have fallen by approximately \$58 million: from \$119,756,915 (2020) to \$97,478,535 (2021) to \$83,274,950 (2022) to \$61,825,078 (2023). Compare Exhibit 19 (Relevant Pages of NRA’s Audited Financial Statements for 2021 and 2020) at p.4, with Exhibit 20 (Relevant Pages of NRA’s Audited Financial Statements for 2023 and 2022) at p.5. Contributions have also fallen by approximately \$45 million: from \$97,364,222 (2020) to \$79,416,321 (2021) to \$65,306,547 (2022) to \$52,837,170 (2023). Id. The NRA has, therefore, *lost approximately half of its support* as result of this Litigation and the publicity associated with it.

71. The very fact of a compliance monitor being appointed will continue the bleed.

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COUNT XIII. Failure to Follow Statutory Requirements Governing Related Party Transactions Set Forth in New York Not-for-Profit Corporation Law (“N-PCL”) §§ 112(a)(10), 715(f) and EPTL § 8-1.9(c)(4) and Requesting the Court to Enjoin, Void or Rescind the Unlawful Related Party Transactions and Award Damages.

72. Following the trial, the jury found that there were ten related party transactions which were not properly authorized in advance. However, the jury also found that eight of those, nonetheless, were properly ratified by the NRA Board or an authorized committee (see Jury Verdict Sheet, Q. II.7(a) and (b)). The remaining two transactions were hair and make-up expenses for Susan LaPierre and payments for speaking engagements by Board Member David Keene. Id. at 7(c).

73. As to the hair and make-up expenses for everyone on that particular day, which included Susan LaPierre, that amount has been paid back by with interest. See Exhibit 21 (Summary of LaPierre’s Repaid Transactions with Check dated November 30, 2021).

74. And, although the jury verdict sheet indicates that the payments for speaking engagements for David Keene were not approved/ratified, that appears to be an error. See Exhibit 22 (Minutes of NRA Audit Committee Meeting dated December 7, 2017, and Relevant Pages of the Report of the Audit Committee dated January 13-14, 2018, approving same) (“In March 2017, the NRA began paying director and past president David Keene \$4,000 per month in support of public speaking appearances at Friends of NRA dinners and other outreach events. Since his term as NRA president ended, Mr. Keene has frequently been requested as a speaker by NRA-affiliated and outside groups. The Committee moved ‘that the Committee finds the transaction with NRA director David Keene for public speaking appearances is fair, reasonable, and in the best interest of the NRA.’ The motion was adopted.”).

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75. The NRA has a Conflict-of-Interest Policy which was adopted in January 2016. See Exhibit 23 attached hereto at pp.17-21. Even the Complaint acknowledges that the policy “hews closely to the requirements of N-PCL § 715, and defines conflicts of interest more broadly as any situation where ‘the interests of the NRA come into conflict with a financial or personal interest of [an officer, director, or key employee], or otherwise whenever [an officer, director, or key employee’s] personal or financial interest could be reasonably viewed as affecting his or her objectivity or independence in fulfilling their duties to the NRA.’” Compl. ¶131.

76. Pursuant to the policy, the Audit Committee is responsible for providing oversight and compliance with the policy and must review all transactions that involve potential conflicts of interest and approve and ratify them if it determines that they are “‘fair, reasonable, and in the best interests of the NRA.’” Id. ¶¶132-133. Eight of the 10 related party transactions at issue in the trial ultimately were deemed to be fair, reasonable and in the NRA’s best interest, but these were ratified *after the fact*.

77. Although the policy allows ratification after the fact (see Ex. 23 at p.20), the NRA now has instituted process improvements to ensure compliance with the Conflict-of-Interest Policy and to ensure that conflict of interest/related party transactions are identified at the outset and that the requisite steps are taken to bring them to the attention of the Audit Committee *before* the transaction is consummated. These include:

- The Conflict-of-Interest Policy is part of the NRA Policy Manual. Directors are provided the policy during their onboarding process, and it is a part of the compliance training the Board receives. See Ex. 13 at pp.14-19 (conflicts of interest and related party transactions policies and procedures).
- The Conflict-of-Interest Policy is also provided to employees as part of the Employee Handbook; every new employee must affirmatively sign that they have received the Handbook upon joining. See Ex. 9 at p.2.

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- The NRA's Office of General Counsel ("OGC") sends a Financial Disclosure Questionnaire (the "Questionnaire") each year to "Covered Persons" under the policy. A sample Questionnaire is attached hereto as Exhibit 24.
- The Questionnaire has been recently updated at the direction of the NRA Audit Committee to include the following question: "Do you or any relative receive any remuneration from an entity that receives assets, including grant funds, vendor payments, collectibles, or donations, from the National Rifle Association or any of its Affiliates." See Report of Audit Committee dated January 5, 2024, attached hereto as Exhibit 25, at p.2.²⁰
- And there is now 100% compliance in receiving back the filled-out questionnaire:
 - Q. And the NRA had problems in the past with compliance with the association's conflict of interest and related-party-transactions policy; right?
 - A. Yeah, I mean, we've – like, anything else, it is a process and people didn't always complete their forms in a timely way; and we've worked really hard over the last several years to increase it, and we've been at the hundred percent the last couple of years.

See Relevant Pages of January 30, 2024, Testimony of John Frazer, attached hereto as Exhibit 26, at 2565:21-2566:3. As a long-time practitioner, I can tell you this is a remarkable feat.

- In addition to review by the OGC, Mr. Mensinger, the NRA's Chief Compliance Officer, reviews the Questionnaires.
- All of the returned Questionnaires are given to the NRA's external auditors as well who have to consider related party transactions as part of their audit and, if required, disclose them in Notes to the Audited Financial Statements as well as on the Form 990.
- Sonya Rowling, the NRA's Chief Financial Officer, separately has instituted a process where the Financial Services Division reviews the vendor and accounts payable files to compile a list of identified conflict of interest transactions and sends them to the OGC for review to determine if the Questionnaires are transparent and complete. This cross-check plays an important function in ensuring that information disclosed is accurate and complete. See Relevant Pages of January 17, 2024, Testimony of Sonya

²⁰ The Audit Committee also directed that future grant applications or sponsorship agreements must include inquiries to establish and document whether any potential conflicts of interest exist. Id.

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Rowling, attached hereto as Exhibit 27, at 1155:9-12 (“The accounting team looks for payments made to – to potential related party and keeps track and then provides that list to the secretary’s office to compare against the financial disclosure questionnaires.”).

- The conflict-of-interest and related party transactions are also part of the Risk Assessment and Loss Exposure Analysis conducted by Ms. Rowling in 2023, and the testing of contracts and purchase orders includes a related party component. See Ex. 4.

78. These process improvements at the NRA provide a reasonable assurance that potential conflicts and related party transactions will be identified and reported accurately and timely *before* the transaction is consummated so that the appropriate steps can be taken in accordance with the Conflict-of-Interest Policy for the Audit Committee to approve/disapprove the transaction as the case may be.

79. In the event, however, a Covered Person enters into a conflict of interest/related party transaction in error or otherwise participates in such a transaction *prior* to approval, the Conflict-of-Interest policy provides that upon discovery, such transaction shall promptly be submitted to the Audit Committee which shall decide whether to: (i) ratify the transaction; (ii) direct the rescission or modification of the transaction; (iii) take any disciplinary action; and (iv) make changes to the NRA’s controls and procedures in connection with such error. See Ex. 23 at p.20.

80. And, if the Audit Committee reasonably believes that a Covered Person has failed to comply with the policy, it may make such further investigation as warranted in the circumstances” and “shall take appropriate action under the NRA Bylaws and applicable law.” Id. at p.21.

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COUNT XIV. Violation for Failure to Adopt a Whistleblower Policy Pursuant to N-PCL § 715-b and Removal of Any Officer, Director or Trustee Who Violated the Whistleblower Policy as Required Under N-PCL § 715-b.

81. The jury found that the NRA failed to adopt a whistleblower policy that complied with New York law between March 20, 2017, and January 22, 2020. See Jury Verdict Sheet, Q. V.9(a). That issue has been fixed.

82. Although the NRA did have a whistleblower policy in 2020 (see Relevant Page of NRA Policy Manual updated March 11, 2020 (attached hereto as **Exhibit 28**), at p.277), on January 3, 2024, the NRA Audit Committee unanimously approved an enhanced Whistleblower Policy. See Ex. 25 at pp.4-8. The policy is fully compliant with the requirements of N-PCL § 715-b.

83. As required by N-PCL § 715-b(b)(1),²¹ the policy sets forth procedures for the reporting of violations or suspected violations of corporate policies, including procedures for preserving the confidentiality of reported information by directors, officers, employees, volunteers and individuals conducting business on behalf of the NRA.

84. Pursuant to the policy, reports may be made in two ways:

(1) Several channels of communication are available to make a report directly in person, by email, or by phone to their manager or to any of the following: any Officer, including the Executive Vice President or Executive Director; HR Director; any attorney/counsel assigned to the OGC; Chairperson of the Audit Committee; Secretary of the Audit Committee; or the Chief Compliance Officer or a Compliance team member (Ex. 25 at 5.1); or

²¹ Since the NRA does not have any directors who are employees, a requirement that they may not participate in any board or committee deliberations or voting relating to the administration of the whistleblower policy, therefore, is not applicable.

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(2) Through the NRA Integrity Hotline, which is serviced by a third-party vendor, reports can be made anonymously. The NRA Integrity Hotline can be accessed 24/7 hours/365 days a year by phone or web at 1-888-NRA-3603 or NRAIntegrity.org. Id. at 5.2.

85. As required by N-PCL § 715-b(b)(2), the NRA has charged its Chief Compliance Officer (“CCO”), who reports directly to the Audit Committee, with reviewing and evaluating the reports and the administering the policy. Id. at 9.0. The CCO “prepare[s] a report for the Audit Committee at each meeting of the general type of reports that were received” and “provide[s] the status of any ongoing investigations or inquiries to the Audit Committee.” Id. at 10.0. The CCO also “provide[s] timely notification to the Chairperson of the Audit Committee regarding certain matters outside of the regularly scheduled meetings to include allegations concerning urgent matters[.]” Id.

86. “The initial reports, investigative reports, and the outcome of the investigation or inquiry will be appropriately documented in the secured case management system, which is maintained exclusively by the CCO,” (id. at 9.0) and “[e]fforts will be made to redact the identity of reporters who requested to remain confidential, unless disclosure is required to recuse the reporter from any deliberations and/or voting or to prevent potential retaliatory action.” Id. at 10.0.

87. As required by N-PCL § 715-b(a), the policy expressly “prohibit[s] retaliatory conduct[,] include[ing] harassment, discrimination or other retaliation action or adverse employment consequences. Actions that tend to discourage other from reporting in the future are also prohibit[ed].” Id. at 8.1.

88. “Any allegations of retaliation shall be promptly reported to the CCO for review and to ensure the allegations will be investigated accordingly.” Id. at 8.0.

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89. “Any employee who retaliates or encourages others to retaliate against a reporter will be subject to disciplinary action, up to and including termination. Allegations against Directors concerning retaliatory conduct will be brought to the attention of the Chairperson of the Audit Committee for further action pursuant to the By-laws.” Id. at 8.1.

90. And, as required under N-PCL § 715-b(b)(3), “[e]xcept for providing information upon the request of the appropriate committee, any Director, Officer, or employee that is the subject of allegations or an investigation concerning misconduct to include retaliation, is not permitted to participate in or be present to any deliberation or voting on the related matter. The same applies to any other implicated party.” Id. at 11.0.

91. Finally, as required by N-PCL § 715-b(b)(4), the policy is emailed to all employees (see Exhibit 29 attached hereto) and NRA Integrity Hotline posters are posted conspicuously at locations accessible to all employees and volunteers. Id.

92. Aside from lacking a compliant whistleblower policy – which the NRA now has – the jury also found that the NRA violated N-PCL § 715-b “by failing to evaluate whistleblower complaints or by failing to ensure compliance by permitting any of the [eight listed] individuals to suffer intimidation, harassment, discrimination or other retaliation to discourage reporting of improper conduct at any time between March 20, 2017, and May 2, 2022. See Jury Verdict Sheet, Q. V.(9)(b).

93. At the outset, it should be noted that it not entirely clear whether the jury found that the NRA “*did not evaluate whistleblower complaints*” by the eight people listed on the verdict sheet or that the NRA “*failed to ensure compliance by permitting [them] to suffer intimidation, harassment, discrimination or other retaliation to discourage reporting or improper conduct.*” See id. (emphasis added).

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94. As to who specifically retaliated, the Complaint alleges that Defendant LaPierre retaliated against directors, including Oliver North, and that Defendant Powell retaliated against suspected whistleblowers. Compl. ¶700. The Complaint further alleges that Defendant Frazer failed to perform his responsibilities as the dedicated employee with responsibility for whistleblower reporting. Id. Both Defendants Powell and LaPierre are no longer with the NRA, and Defendant Frazer is no longer General Counsel; the NRA's Chief Compliance Officer, Mr. Mensinger now has responsibility for administering the Whistleblower Policy.

95. Whatever may have occurred in the past, the impact of this leadership change at the NRA and the change in the Board composition (see supra at ¶¶47-50) are emblematic of governance reform at the NRA.

96. Two of the seven Board members on the jury verdict sheet – Phillip Journey and Rocky Marshall – who were allegedly retaliated against, included Mr. Marshall who claimed he was retaliated against by not being put on the ballot for Board elections in an earlier year. Both Mr. Marshall and Mr. Journey were elected to the NRA Board this year. See Ex. 11.

97. In addition to these individuals listed on the jury verdict sheet, there were also senior staff in the Office of the Treasurer (whom the Complaint labels as the “NRA Whistleblowers,” meaning NRA employees who did make a formal report). See Compl. ¶506. Their concerns were documented in a memo to the Audit Committee (the “Top Concerns Memo”). Id.

98. And the NRA responded to address these very concerns. As the Bankruptcy Court found, both Ms. Rowling and Mr. Erstling, the NRA's Director of Budget and Financial Analysis, “testified that the concerns they expressed in the 2017 Whistleblower Memo are [as of 2021] no longer concerns.” Bankruptcy Order at 35.

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99. Indeed, the Top Concerns Memo originated from the Office of the Treasurer at the time, and Sonya Rowling was one of the whistleblowers. Ms. Rowling has since been promoted and now is the NRA's Chief Financial Officer. As the Bankruptcy Court noted, "[i]t is also an encouraging fact that Ms. Rowling has risen in the ranks of the NRA to become the acting chief financial officer, both because of her former status as a whistleblower and because of the Court's impression of her from testimony as a champion of compliance." Id.

100. The fact that whistleblowers such as Sonya Rowling have been applauded for their work in identifying problems and finding solutions and promoted for their efforts is quite remarkable and is a testament to the NRA's willingness to self-examine and course correct.

101. And the NRA now has a whistleblower policy as required under New York law, overseen by its new Chief Compliance Officer, to ensure ongoing compliance.

COUNT XV: False Filings Under Executive Law § 172-(d)(1) and Enjoining the NRA from Soliciting or Collecting Funds on Behalf of Any Charitable Organization Operating in New York Pursuant to Executive Law § 175(2)(d).

102. The jury found that the NRA's annual CHAR500 filing, which included the NRA IRS Forms 990 between March 20, 2017, and May 2, 2022, contained statement(s) or omission(s) that were materially false, and that Defendant Frazer made or authorized it and knew or should have known that these statement(s) or omission(s) were materially false. See Jury Verdict Sheet, Q. VI.

103. At the outset, it should be noted that the NRA did, in fact, have outside tax professionals at the time who prepared the Forms 990.

104. Nonetheless, to ensure that mistakes like this do not happen again and that there is appropriate disclosure and correction, the NRA has taken remedial steps.

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105. So, for example, one of the false statements alleged by the NYAG is the NRA's response to Question 12(c) in Part VI, Section B (Policies) of the Form 990 which asks "[d]id the organization regularly and consistently monitor and enforce compliance with the [conflict of interest] policy?" The NRA answered "Yes" in 2016-2022, which the NYAG alleged was false. See Compl. ¶567(d)(ii).

106. As discussed, there were ten conflicts/related party transactions which were not pre-approved, eight of which the jury found were properly ratified by the NRA Board. See Ex. 23 at p.20 (if the NRA enters into a transaction without pre-approval, the Audit Committee may ratify such transaction).

107. But more to the point, as discussed above in detail (see supra at ¶¶82-91), the NRA has since instituted process improvements to address precisely this issue to regularly and consistently monitor and enforce compliance with the Conflict-of-Interest policy.

108. Similarly, Part IV, Question 25(a) of the Form 990 asks "[d]id the organization engage in an excess benefit transaction with a disqualified person during the year?" The NRA answered "No" *prior to 2019*, which the NYAG alleged was false. See Compl. ¶567.

109. In 2019, the NRA engaged new auditors Aprio (f/k/a/ Aaronson and Associates).

110. While it turned out that Defendant LaPierre, in fact, did engage in excess benefit transactions between March 20, 2017, and May 2, 2022, notably, the Form 990 contemplates the possibility that the NRA may not have known about these transactions when they actually happened as Part IV, Question 25(b) asks: "[i]s the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ?"

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111. So, for example, in 2017 and 2018, the NRA answered “No” to Questions 25(a) and 25(b). See Exhibit 30, Relevant Pages of the Forms 990 for years-ended 2017 and 2018, Part IV.

112. In 2019, however, the NRA answered “Yes” to both questions and disclosed in Schedule L that the NRA “has identified what it believes are excess benefit transactions in which it engaged in 2019 *and in prior calendar years of which it became aware* but were not reported on its prior Forms 990.” See Exhibit 31, Form 990 for year-ended 2019, Schedule L (emphasis added).

113. As to these excess benefit transactions, the NRA also disclosed on Schedule L that it was in the process of reviewing and investigating some of these excess benefit transactions that took place between 2015 and 2019; some of these were in dispute, and, in in other cases, the NRA had sought and/or obtained correction. Id. at Schedule L.

114. Specifically, with respect to Mr. LaPierre, the following excess benefit transactions were paid back with interest by him: travel expenses (id.); expenses related to six chartered jet trips between 2013-2014 (see Ex. 21); the fair market value of a leased vehicle purchased by Mr. LaPierre in 2016 (see Exhibit 32, Relevant Pages of the Form 990 for year-ended 2021, Schedule L); and personal travel, gifts over \$25 to employees and cell phone equipment and services purchased by Mr. LaPierre between 2011 and 2018. See Ex. 1, Schedule L.

115. Besides these remedial steps, the NRA has also sought to ensure that its Forms 990 are verifiably accurate.

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116. Aprio, its new auditor, performs audit services as well as a review of and consulting work on the 990. See Relevant Pages of February 7, 2024, Testimony of Stacey Cullen, attached hereto as **Exhibit 33**, at 3630:8-22.

117. Stacey Cullen, who is Aprio's Director of Nonprofit Services and has personally been involved in the review of and consulting work on the NRA Forms 990 since 2021 (id. at 3630:16-3631:2), and who is an attorney herself with a LLM in taxation (id. at 3632:12-14), "flip[s] every single page looking for accuracy" (id. at 3633:22) and interacts and reviews them with Sonya Rowling and others, who, as Ms. Cullen testified are "very involved in the process" (id. at 3633:25-3634:22). The NRA's Chief Financial Officer – Sonya Rowling – who reports to the Audit Committee, therefore, is personally involved in reviewing the Form 990 for accuracy.

118. The Form 990 is then presented to the Audit Committee. As Ms. Cullen testified, "[t]he past two years I have done a virtual presentation to the Board of the 990 where we walk through all – every page of the 990 and point out the important parts that they really need to be focusing on as well as the general information that's contained in the return," and the NRA Audit Committee is "much more involved" than many of her other clients. Id. at 3635:2-3636:4.

119. The NRA also uses the C-Track validation process to prepare its returns, which is designed just for the Form 990. As Ms. Cullen testified, it is "an excellent software" that "runs the data to make sure all of the numbers are tied in correctly and that every part that is required to be completed is complete." Id. at 3636:15-3637:12. And, as Ms. Rowling testified, C-Track is "like a Turbo Tax for nonprofits" and provides "good checks and balances." See Relevant Pages of February 6, 2024, Testimony of Sonya Rowling, attached hereto as **Exhibit 34**, at 3474:8-3475:3.

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120. All of these steps have been taken to ensure that information reported on the Form 990 is accurately reported with reasonable certainty. It is much more than what most nonprofits do.

121. Under these circumstances, enjoining the NRA from soliciting or collecting charitable funds in New York, is neither warranted, nor an appropriate remedy.

122. A trio of U.S. Supreme Court cases in the 1980s – Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980); Secretary of State of Md. v. Joseph H. Munson Co., Inc., 467 U.S. 947 (1984); and Riley v. National Federation of the Blind of North Carolina, 487 U.S. 781 (1988) – make it abundantly clear that fundraising is an expressive First Amendment activity and any effort at curtailing or regulating it is subject to strict scrutiny.

123. Entirely forbidding it, a fortiori, would be blatantly unconstitutional except in cases of fundraising fraud in which funds are solicited for a charitable purpose and not devoted to that purpose. There is little question that substantially all of the money raised by the NRA, directly and indirectly, was used for its activities, notwithstanding any benefits that may have accrued to certain executives and management. The jury verdict all but confirms this.

124. The dollar amount of monetary harm suffered by the NRA as a result of Mr. LaPierre's violations from March 20, 2014, through May 2, 2022, is \$5.4 million (Jury Verdict Sheet, Q. II.2(c)) and \$2 million dollars as a result of Defendant Wilson's violation from March 20, 2014, through December 31, 2018. (Id. at Q. II.3(c)). During this period, the NRA raised well over a *billion* dollars. See Page 1 of the Forms 990 for years-ended 2014 through 2022, attached hereto as Exhibit 35.

125. The NRA is neither a sham, nor does it exist primarily to carry out illegal activity. While there were some bad actors in the past, there is no question that the NRA raises

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and uses virtually all its funds for its organizational purposes. If some few million dollars went “sideways,” more than a billion dollars were devoted to NRA causes and activities.

126. A ban on solicitation in New York would substantially curtail these legitimate, constitutionally protected causes and activities.

127. Just as this Court stated in the request for dissolution, the NYAG’s request for enjoining the NRA from solicitation in New York, “fail[s] to delineate between the NRA, on the one hand, and its leaders on the other, who acted ‘without regard to the NRA’s best interest.’” Decision and Order on Motions to Dismiss, People of the State of New York v. Nat. Rifle Ass’n of Am., Inc., et al., Index No. 451625/2020, at 25 (N.Y. Sup. March 2, 2022) (citation omitted).

128. Enjoining the NRA from soliciting charitable funds in New York is a penalty aimed to protect the public from further harm. But, as this Court has already opined, “[t]he malfeasance alleged in the Complaint – if proven – is undoubtedly troubling, but the [NYAG] does not allege that the NRA’s mismanagement under LaPierre and others ‘has produced, or tends to produce, injury to the public.’” Id. at 24 (citation omitted). And “[t]he main victim of the NRA’s alleged dysfunction has been, according to the Complaint, the NRA and its members.” Id. (citation omitted).

129. Given that fundraising is an expressive First Amendment activity and any effort at curtailing or regulating it is subject to strict scrutiny, enjoining the NRA from soliciting or collecting funds in New York, therefore, would be a disproportionate remedy and one that is constitutionally impermissible.

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