

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  
et al.,**

**Defendants.**

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**INDEX NO. 451625/2020**

**(Cohen, J.)**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT  
THE NATIONAL RIFLE ASSOCIATION'S MOTION TO TRANSFER VENUE**

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Defendant the National Rifle Association of America (the “NRA”) respectfully makes this motion pursuant to CPLR 511(b) and New York Not-for-Profit Corporation Law (“N-PCL”) Article 11 to transfer venue from New York County to Albany County, as follows:

### **PRELIMINARY STATEMENT**

The New York State Office of the Attorney General (the “NYAG”) has sued to dissolve the NRA’s corporate existence, imposing a “judgment . . . of corporate death,”<sup>1</sup> a move that constitutional scholars decry as nakedly political.<sup>2</sup> The NYAG’s choice of venue is political, too. Although venue in a dissolution action, like this one, is conclusively dictated by an entity’s certificate of incorporation,<sup>3</sup> and the NRA’s certificate designates no location in New York except Albany,<sup>4</sup> the NYAG contrived to sue in Manhattan. Alerted to this error, the NYAG now attempts to justify its choice of venue based on a series of constructions and inferences that have no basis in New York law and have never been adopted by a New York court. Having averred under oath

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<sup>1</sup> See *People v. Oliver Schools*, 206 A.D.2d 143 (4 Dept 1994) (quoting *People v. North River Sugar Refining Co.*, 121 N.Y. 582, 608 (1890)).

<sup>2</sup> See, e.g., Noah Feldman, *New York’s Attorney General Shouldn’t Dismantle the NRA*, BLOOMBERG (Opinion, Aug. 6, 2020), <https://www.bloomberg.com/opinion/articles/2020-08-06/new-york-s-attorney-general-shouldn-t-dismantle-nra-in-lawsuit>; David Cole, *The NRA Has a Right to Exist*, WALL ST. J. (Opinion, Aug. 26, 2020), [https://www.wsj.com/articles/the-nra-has-a-right-to-exist-11598457143?mod=opinion\\_lead\\_pos7](https://www.wsj.com/articles/the-nra-has-a-right-to-exist-11598457143?mod=opinion_lead_pos7) (“The American Civil Liberties Union rarely finds itself on the same side as the National Rifle Association in policy debates or political disputes. Still, we are disturbed by New York Attorney General Letitia James’s recent effort to dissolve the NRA”); Jonathan Turley, *The Tragic Irony of the New York State Lawsuit Against the NRA*, THE HILL (Opinion, Aug. 8, 2020), <https://thehill.com/opinion/judiciary/511155-the-tragic-irony-of-the-new-york-state-lawsuit-against-the-national-rifle-association> (“Trying to dissolve an organization engaged in political speech should not occur absent overwhelming proof that it is a criminal enterprise, which is why this has never happened with a group like the NRA.”); Alan Z. Rozenshtein, *The Attempt to Dissolve the NRA Threatens Democratic Norms*, LAWFARE (Opinion, Aug. 11, 2020), <https://www.lawfareblog.com/attempt-dissolve-nra-threatens-democratic-norms> (“I personally can’t stand [the NRA] . . . [b]ut that said . . . James’s attempt to dissolve the NRA in its entirety is a violation of key democratic and rule-of-law norms.”).

<sup>3</sup> N-PCL § 1110.

<sup>4</sup> See, e.g., Dkt. No. 109 Ex. A (NRA Secretary of State Filings) at 24.

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in its verified Complaint that venue was proper because “the office of the NRA is in New York County as set forth in the NRA’s certificate of incorporation,”<sup>5</sup> the NYAG now seems to concede that the NRA’s certificate of incorporation never set forth any such thing. Instead, the NYAG urges that the NRA should be inferred to maintain an office in New York County because certain statutes, not in existence at the time the NRA was formed, require documents to be lodged or approved in the same county where an entity is located.<sup>6</sup> This manufactured justification lacks merit.

Neither N-PCL § 1110 nor any provision of the Civil Practice Law and Rules (“CPLR”) permits the NYAG to maintain this action in New York County. The NRA therefore respectfully seeks a change of venue to Albany County, where at least one related federal lawsuit is pending,<sup>7</sup> and where this case belongs.<sup>8</sup>

**STATEMENT OF FACTS****A. At the Time the NRA Was Formed, It Was Not Required to Designate, And Did Not Designate, An Office Location.**

The NRA is a not-for-profit corporation domiciled in the State of New York and headquartered in Fairfax, Virginia. Although the N-PCL now requires that any not-for-profit corporation formed in New York file a certificate of incorporation designating “the county within

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<sup>5</sup> See Dkt. No. 11 (Summons and Amended Complaint) at 1, ¶ 26.

<sup>6</sup> Dkt. No. 108 (Stern Affidavit) ¶¶ 6-12.

<sup>7</sup> *Nat’l Rifle Ass’n of Am. v. James*, Civ. No. 1:20-cv-00889-MAD-TWD (N.D.N.Y.).

<sup>8</sup> As the Court is aware, on October 19, 2020, the NRA filed a motion to dismiss the Complaint on grounds including the pendency of a similar, factually related case in the United States District Court for the Northern District of New York. Dkt. Nos. 70-99. Although the NRA still maintains that federal court is the proper forum for these proceedings, to the extent that the Supreme Court proceeds to hear the NYAG’s dissolution claim, Albany County is the only proper venue.

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the state in which the office of the corporation is to be located,”<sup>9</sup> that statutory requirement did not exist when the NRA was formed in 1871. Instead, although the 1865 special act of the New York State Legislature (the “1865 Act”), pursuant to which the NRA was formed, provided that persons wishing to associate for hunting, fishing, or similar purposes “may make, sign . . . and file” a certificate in the office “of the clerk of the county in which the office of such society shall be situated”<sup>10</sup> (with the consent of a judge in the same district),<sup>11</sup> there was no *requirement* that a newly formed non-profit maintain an office in a particular county, or even designate an address for service of process or any other purpose. Once a new entity was duly constituted, the 1865 Act required it to make subsequent annual filings attesting to its holdings and activities, and specified that those filings be made “in the county clerk’s office where the original certificate is filed,” irrespective of where the entity actually operated.<sup>12</sup> In sum, the 1865 Act sought to ensure that local records would reflect, and a local judge would approve, the existence of any non-profit likely to headquarter itself in a particular district, but did not require the entity to maintain an office—literally, or formally—anywhere in the State. In sum, the 1865 Act contained no provision requiring, or permitting, an entity to designate or amend the location of its office. Once an entity came into existence under the 1865 Act, it would continue to make annual filings in the same judicial district where it made its initial filing, irrespective of where its offices were.

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<sup>9</sup> See N-PCL 402(3).

<sup>10</sup> Dkt. 110 § 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* § 8.

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Consistent with this scheme, the NRA did not identify any office in the Articles of Incorporation lodged with the Secretary of State in Albany, New York, on November 20, 1871.<sup>13</sup> The NRA was formed by officers and ex-officers of the New York National Guard seeking to improve northerners' marksmanship skills in the wake of the Civil War,<sup>14</sup> who congregated to discuss the establishment of a rifle practice association at the Manhattan office of the *Amy and Navy Journal*.<sup>15</sup> The Articles of Incorporation were drafted, and signed, at the *Army and Navy Journal* office. In the NRA's early years, members met there or in the officers' rooms of various divisional or regimental armories.<sup>16</sup> The NRA had no office. Nor did New York law require it to identify or establish one.

**B. New York Did Not Require Newly Formed Non-Profits to Register an Office Location Until 1895—A Requirement That Did Not Apply to the NRA.**

The first brick-and-mortar facility established by the NRA was a shooting range located initially on Creedmore, Long Island (now Queens Village, New York), which was not part of New York County.<sup>17</sup> However, the range was relocated to Sea Girt, New Jersey in 1892 following the loss of financial support from New York and again in 1907 to Camp Perry in Ohio.<sup>18</sup> Thereafter, the NRA continued to organize rifle clubs in other states. Following the passage of the National

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<sup>13</sup> Dkt. No. 109 Ex. A at 44-51.

<sup>14</sup> See Jeffrey L. Rodengen, *NRA: AN AMERICAN LEGEND* 15-18 (2002), excerpted as Exhibit A to the Affirmation of Sarah B. Rogers (hereafter, "Rogers Aff.").

<sup>15</sup> *Id.* at 18.

<sup>16</sup> See James B. Trefethen, *AMERICANS AND THEIR GUNS: THE NATIONAL RIFLE ASSOCIATION STORY THROUGH NEARLY A CENTURY OF SERVICE TO THE NATION* 37, 41 (1967), excerpted as Rogers Aff. Ex. B.

<sup>17</sup> Rogers Aff. Ex. A at 20-21; Rogers Aff. Ex. B at 42-53.

<sup>18</sup> Rogers Aff. Ex. A at 13.

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Board for the Promotion of Rifle Practice, the NRA moved its headquarters to Washington, D.C. to facilitate the organization's political advocacy efforts.<sup>19</sup> In 1994, the NRA relocated to its current location in Fairfax, Virginia.<sup>20</sup>

In 1895, more than twenty years after the NRA came into existence, and three years after the NRA relocated its shooting range from Creedmore to New Jersey, the 1865 Act was abolished and replaced with the Membership Corporations Law ("MCL").<sup>21</sup> The MCL introduced, for the first time, the requirement that a newly formed non-profit designate a principal office.<sup>22</sup> However, the MCL contained no provision requiring already-existing non-profits to designate or establish a New York office, and the NRA did not do so. Importantly, when it was enacted in 1895, the MCL required that subsequent amendments to a corporation's founding documents be filed in the same judicial district as the initial certificate of incorporation—even if the principal office location had changed.<sup>23</sup> In other words, even after it began to require non-profits to designate for themselves a principal office location within the state, New York still did not mandate that amendments be filed in the same county as the principal office. Instead, New York statutes continued to emphasize continuity with respect to where documents were filed: amendments had to be filed in the same

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<sup>19</sup> Joe Sommerlad, *How Was the NRA Founded and How Did a Gun Lobby Become So Influential in American Politics?*, INDEPENDENT (U.K.), April 26, 2019, <https://www.independent.co.uk/news/world/americas/us-politics/nra-national-rifle-association-history-gun-control-second-amendment-oliver-north-a8887286.html>

<sup>20</sup> See Michael D. Shear, *NRA Makes Move to Fair Oaks*, WASH. POST. (Mar. 18, 1993), <https://www.washingtonpost.com/archive/local/1993/03/18/nra-makes-move-to-fair-oaks/ca29d8fa-9d58-4c81-9dab-3a38d7471554/>

<sup>21</sup> *E.g.*, Rogers Aff. Ex. C (Membership Corporation Law of 1895).

<sup>22</sup> *Id.* § 31, subsequently Section 41 as of 1901 and Section 10 as of 1909. See Rogers Aff. Ex. D (MCL as of 1909).

<sup>23</sup> *Id.* § 4.



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county as a corporation's original formation documents, likely to ensure the existence of a complete file in a single location during a pre-digital age.

**C. Over the Next Century, the NRA Continued to File Amendments in Both New York County and Albany, But Never Established a New York Office.**

Throughout its long history, the NRA made amendments to its certificate of incorporation. Subsequent amendments to the 1895 MCL introduced the ability of a non-profit formed under an earlier law to reincorporate under the MCL,<sup>24</sup> but this was not mandatory, and the NRA did not do so. Consistent with the new statutory scheme in which non-profits designated principal places of business in their certificates of incorporation, the MCL was also amended to provide for a process to change the location of the principal place of business and also to require that a Supreme Court justice from the district where the principal place of business was located approve any amendment to a non-profit's purpose.<sup>25</sup> None of the revisions to the MCL mandated that a pre-existing non-profit designate a principal place of business, and the NRA did not do so. The judicial approval provision, enacted as Section 30 to the MCL, was in effect when the NRA filed an amendment to its corporate purposes in 1956.<sup>26</sup> Having designated no place of business and having no place of business within New York State at that time, the NRA filed its amendment in Albany County but sought and received approval of the amendment by a justice in the First Judicial District, where it had filed its original certificate of incorporation.<sup>27</sup>

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<sup>24</sup> *E.g.*, Rogers Aff. Exs. E and F (MCL as of 1930 and 1946) § 13.

<sup>25</sup> *Id.* § 30.

<sup>26</sup> Dkt. No. 109 Ex. A. at 28-29.

<sup>27</sup> *Id.*

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With the enactment of the N-PCL in 1969, existing non-profits were required to file an amendment electing one of four newly established categories or “types,” but, again, were not required to amend their certificate of incorporation to add a principal place of business.<sup>28</sup> The new law did, however, require every existing non-profit to designate the New York Secretary of State as a recipient of process within New York and to provide an address either within or without New York to which the Secretary of State should mail any process received.<sup>29</sup> The NRA complied with a 1973 amendment that listed an address in Washington, D.C.<sup>30</sup>

In 1977, the NRA filed another amendment to its certificate of incorporation undoing the 1956 amendment.<sup>31</sup> The amendment designated a Washington, D.C. address—but having no office within New York State, the NRA again filed the amendment with the approval of a justice from the First Judicial District. In 2002, the NRA designated an agent within New York State for service of process in Albany County, NY and stated that address as the address to which the Secretary of State should mail any process served on it.<sup>32</sup>

**D. The NYAG Improperly Commenced This Action In New York City.**

This dissolution action was commenced on August 10, 2020 by the Attorney General of the State of New York (“NYAG”) pursuant to, *inter alia*, New York Not-for-Profit Corporation

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<sup>28</sup> N-PCL § 113 (repealed 2013).

<sup>29</sup> *Id.*

<sup>30</sup> Dkt. No. 109 Ex. A at 21-22.

<sup>31</sup> *Id.* at 13-18. This amendment was filed pursuant to N-PCL 804, a substantially identical replacement for MCL § 30.

<sup>32</sup> *Id.* at 24.

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Law (“N-PCL”) Sections 1101 and 1102.<sup>33</sup> It represented the culmination of an extensive media campaign, launched by the Attorney General during her campaign for office in 2018, to vilify the NRA in New York City-based outlets.<sup>34</sup>

Both the summons and complaint in this action state that venue is based on NYAG’s belief that the NRA’s certificate of incorporation designates its place of business as within New York County.<sup>35</sup> On October 19, 2020, the NRA served a written demand on NYAG, pursuant to CPLR 511(b), to change the venue of this action to Albany County.<sup>36</sup> On October 26, 2020, NYAG filed a response alleging that venue in New York County is proper because, it argues, by virtue of having filed its original certificate of incorporation as well as certain amendments in New York County, as well as having certain of those amendments approved by a First Department justice, that the NRA impliedly identified its principal place of business in New York County.<sup>37</sup>

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<sup>33</sup> See Amended Complaint (“Complaint” or “Compl.”), Dkt. No. 11. Although the NYAG previously filed a summons and complaint on August 6, 2020 (*see* Dkt. No. 1), that complaint contained a defective verification and the NRA timely opted to treat the pleading as a nullity pursuant to CPLR 3022 and so notified NYAG (*see* Dkt. No. 10).

<sup>34</sup> See, e.g., Jillian Jorgensen, *Letitia James Says She’d Investigate NRA’s Not-For-Profit Status If Elected Attorney General*, N.Y. DAILY NEWS (July 12, 2018), <https://www.nydailynews.com/news/politics/ny-pol-tish-james-nra-20180712-story.html>; *Attorney General Candidate, Public Advocate Letitia James*, OUR TIME PRESS (Sept. 6, 2018), <http://www.ourtimepress.com/attorney-general-candidate-public-advocate-letitia-james/>; Teddy Grant, *Letitia ‘Tish’ James on Becoming New York’s Next Attorney General*, EBONY (Oct. 31, 2018), <https://www.ebony.com/news/letitia-tish-james-on-becoming-new-yorks-next-attorney-general>

<sup>35</sup> Dkt. No. 1 at 1; Compl. ¶ 26.

<sup>36</sup> Dkt. No. 39.

<sup>37</sup> Dkt. No. 108.

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ARGUMENT**I. The NYAG's Dissolution Action May Only Be Brought in Albany County**

N-PCL § 1110 mandates that all dissolution actions brought under Article 11 of the N-PCL—including those brought by NYAG—“be brought in the supreme court in the judicial district in which the office of the corporation is located at the time of the service on the corporation of a summons in such action.” The office of a corporation is defined as “the office the location of which is stated in the certificate of incorporation.”<sup>38</sup> This decision is up to the corporation to designate, and it is irrelevant whether the corporation actually conducts business in that location.<sup>39</sup>

Contrary to NYAG's allegation in paragraph 26 of the Complaint, the NRA's certificate of incorporation does not “set forth” that “the office of the NRA is in New York County.” Instead,

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<sup>38</sup> N-PCL § 102 (“Definitions”), subparagraph (a)(11). *See Cooper v Mobil Oil Corp.*, 264 A.D.2d 578, 578-79 (1 Dept 1999) (“Plaintiffs commenced this personal injury action against defendant based upon alleged Labor Law violations and designated New York County as venue by reason of defendant's certificate of incorporation which named New York County as the location of its principal office. Supported by an affidavit from a corporate officer, defendant moved to change venue to Suffolk County, plaintiffs' county of residence, upon the ground that defendant had no principal office or place of business in New York when this action was commenced and that the defendant's principal office is, in fact, located in Fairfax County, Virginia. Although CPLR 503(c) deems a corporation to be a resident of the county in which its principal office is located, Business Corporation Law § 402 requires that a corporation list on its certificate of incorporation a location within New York State for its principal place of business. Defendant designated New York County in that manner and plaintiffs properly relied upon that designation in selecting venue) (citations omitted); *Astarita v Acme Bus Corp.*, 55 Misc. 3d 767 (Sup. Ct. N.Y. Cnty. 2017) (granting motion for change of venue, holding that venue was proper in Suffolk County where corporation changed its principal office as reported in biennial registration statement); *Keehn v. S. & D. Motor Lines, Inc.*, 41 N.Y.S.2d 521 (Sup. Ct. N.Y. Cnty. 1943) (“The law is abundantly clear that the office and principal place of business for venue purposes of a domestic corporation, . . . , is fixed by its certificate of incorporation.”).

<sup>39</sup> *See* N-PCL § 102 (“Definitions”), subparagraph (a)(11), CPLR 503(c); *see also Valley Psychological, P.C. v. Gov't Empl's Ins. Co.*, 95 A.D.3d 1546, 1547-48 (3 Dept. 2012) (“[T]he location of a corporation's principal office is determined solely by the designation in its certificate of incorporation.”) (citing *Bakht v. Southridge Coop., Section 4, Inc.*, 70 A.D.3d 988 (2011)).

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the NRA was not required to designate, and did not designate, a New York office location when it was formed, nor did it designate such a location on any future iteration of its certificate of incorporation. However, the NRA designated several physical addresses for similar purposes, none of which were located in New York County. Specifically, the NRA listed its headquarters in Washington, D.C. (later Virginia), and specified that process be served upon it via a registered agent in Albany.

Where, as here, a corporation lacks a domestic office, at least one court has determined that the venue analysis defaults to the location of the registered agent—here, Albany.<sup>40</sup> Indeed, this is the only sensible application of N-PCL § 1110 to the present facts. When the New York State Legislature adopted the mandatory venue provision of N-PCL § 1110, it made a decision to circumscribe the ability of the NYAG—which is a resident of every county—to seek a “judgment . . . of corporate death” in any location it pleases. Albany is the only location in New York where the NRA may be, in any practical sense, found. Moreover, Albany provides a superior venue for this action because other NRA-related litigation is already pending in federal court there, and because the Albany media ecosystem has been less likely to have tainted potential jurors given James’ publicity campaign to the Manhattan media.<sup>41</sup>

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<sup>40</sup> See *Gilinsky v. Ashforth Properties Const., Inc.*, 2019 WL 4575685 (Sup. Ct. N.Y. Cnty. Sept. 17, 2019) (citing CPLR 503(c) and *Memminger v. Nelson Gardens, Inc.*, 14 A.D.3d 442, 443 (1 Dept 2005)).

<sup>41</sup> The NYAG argues that its inclusion of additional claims within the Complaint should vitiate or override the mandatory venue provision of N-PCL § 1110. Dkt. No. 108 ¶ 16. However, the sole case cited by the NYAG in its attempt to meet what ought to be a considerable burden—averting the legislature’s clear choice to circumscribe venue for the gravest cause of action under corporate law—involved multiple statutory causes of action with “conflicting venue provisions.” *Id.* (citing *Tashenberg v. Breslin*, 89 A.D.2d 812 (4 Dept. 1982)). Here, there is no conflict. The NYAG is a resident of every county and can bring each and every instant claim in Albany, which

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**CONCLUSION**

For the foregoing reasons, this action should be transferred to the County of Albany for further proceedings.

Dated: November 3, 2020

Respectfully submitted,

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is the mandatory venue for its dissolution claim. *Tashenberg* is additionally distinguishable because it involved an action under the Business Corporation Law, not the Not-for-Profit Corporation Law, and the latter omitted the provision of the predecessor to the BCL that allowed the Attorney General to proceed with an action under the BCL for dissolution in any county. Moreover, the N-PCL contains a special jurisdiction provision that limits jurisdiction to oversee dissolution of a not-for-profit corporation to the supreme court in the judicial district in which the office of the corporation is located. N-PCL § 1008 (“Jurisdiction of supreme court to supervise dissolution and liquidation . . . [T]he supreme court in the judicial district where the office of the corporation was located at the date of its dissolution . . . may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation . . .”).

**ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, Sarah B. Rogers, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that the Memorandum of Law in Support of the NRA's Motion to Transfer Venue complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 3,478 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: November 3, 2020  
New York, New York

*/s/ Sarah B. Rogers*

\_\_\_\_\_  
Sarah B. Rogers