

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHENPART 03M*Justice*

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK,

INDEX NO. 451625/2020

Plaintiff,

- v -

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

Defendant.

-----X

INTERIM DECISION AFTER NON-JURY TRIAL

Attached is the So-Ordered portion of the trial transcript reflecting the Court's interim
decision on non-monetary remedies after the Phase 2 non-jury trial.

DATE: 8/1/2024



JOEL M. COHEN, JSC

Check One:

☐

Case Disposed

☒

Non-Final Disposition

Check if Appropriate:

☐

Other (Specify _____)

OTHER ORDER – NON-MOTION

2037

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

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

Defendants.

-----X
Index No. 451625/20
TRIAL

60 Centre Street
New York, N.Y.
July 29, 2024

B E F O R E:

HONORABLE JOEL M. COHEN,
Justice

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ALAN F. BOWIN, CSR, RMR, CRR

Summation - Connell

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1 are important, are serious and should be reflected by relief
2 that this Court awards.

3 And I would just note, your Honor: It is not only
4 plaintiff asking that Mr. LaPierre be barred from serving in
5 an important role in the NRA; it is, if not universal,
6 widespread throughout the witnesses here, including defense
7 and plaintiff's witnesses. Frank Tait, Rocky Marshall, Phil
8 Journal -- Journey -- Mark Vaughan, William Bachenberg, even
9 the NRA's expert Daniel Kurtz, stated that it is important
10 that LaPierre is no longer at the NRA.

11 We, therefore, ask your Honor for the relief set
12 out in Exhibit O in regard to the individual defendants.

13 Thank you very much, your Honor.

14 THE COURT: Thank you very much.

15 I'm going to take a short break and be back in,
16 hopefully, five minutes.

17 (Recess.)

18 THE COURT: All right. I appreciate everyone's
19 hard work. This case has, as people have noted, been almost
20 four years in the making and even longer than that with the
21 investigation. So I'm going to give you a decision that
22 resolves most of the issues, with a couple left for
23 post-trial briefing, of sorts.

24 So I'll give you my thoughts and then we'll talk
25 about next steps.

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1 This trial was the last chapter in a long and
2 hard-fought litigation commenced by the Attorney General,
3 asserting violations of New York law by the NRA and several
4 of its high-ranking officers. After a six-week jury trial
5 resulting in a verdict finding for the Government on most
6 but not all claims, the only remaining issues before me
7 concern the nonmonetary remedies, if any, necessary and
8 appropriate to remedy and prevent the recurrence of the
9 violations determined by the jury.

10 It is well-established that equitable relief is a
11 matter of discretion for the Court. In a case brought by
12 the New York Attorney General under other statutes giving
13 her enforcement authority; that is, *People v. Greenberg*,
14 27 N.Y.3d 490, from 2016, the Court of Appeals observed that
15 "The attorney general may obtain permanent injunctive relief
16 upon a showing of a reasonable likelihood of a continuing
17 violation based upon the totality of the circumstances."

18 In a similar vein, the U.S. Supreme Court has noted
19 that "the function of equity is not to punish but merely to
20 take such action as the court in its discretion deems
21 necessary to prevent the recurrence of the improper
22 conduct." A number of cases stand for that proposition, one
23 of which is *Hartford-Empire v. United States*, 323 U.S. 386.

24 And as the Second Department has noted, "'[A] court
25 of equity has an obligation to go no further than absolutely

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1 necessary to protect the rights of the complaining
2 parties.'" That's Zutt, Z-u-t-t, v. State, 80 A.D.3d 758,
3 Second Department [2011], quoting the Antinelli case,
4 A-n-t-i-n-e-l-l-i. I believe those common-sense principles
5 apply equally under the statutes at issue here, the
6 Not-For-Profit Corporation Law and the EPTL.

7 In considering the relief requested by the State
8 and the NRA's objections to that relief, I have considered
9 the NRA's conduct as revealed by evidence admitted during
10 the jury trial as well as the changes that have occurred in
11 the past several months, so I'm starting with the relief
12 against the NRA and I'll deal with the relief against the
13 individual defendants after that.

14 This is a difficult decision because the evidence
15 regarding the NRA's conduct, including that of its
16 employees, executives and board members, is decidedly mixed.

17 I have first considered the fact that NRA leaders
18 have failed to fully acknowledge the jury's findings against
19 the NRA and thus have not taken full responsibility for
20 their or their predecessors' failure to discharge their
21 oversight obligations.

22 The NRA's apparent view that the jury's verdict
23 against the NRA was solely based on the conduct of rogue
24 individuals is contrary to the jury's findings. There's
25 even a statement in their materials that the NRA was not

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1 found liable at all, which is absolutely untrue. The jury
2 was instructed that the NRA generally operates through its
3 designated agents and employees, including the board of
4 directors. It was also instructed that even if the officers
5 and employees acted against the interests of the entity, the
6 NRA may still be liable under the statutes. And under New
7 York law, when the verdict can be reconciled with a
8 reasonable view of the evidence, the successful party, here
9 the Attorney General, is entitled to the presumption that
10 the jury adopted that view. So there are multiple pathways
11 to finding the NRA liable, which the jury did.

12 And I will say, as someone who oversaw every second
13 of the jury trial, I can state plainly that the NRA
14 leadership's spin, and specifically the testimony here of
15 Mr. Cotton and Mr. Barr, that the NRA prevailed or was
16 otherwise vindicated by the jury's verdict is simply false
17 and demonstrates a stunning lack of "accountability," which
18 is a word I saw and heard many times at trial, this week,
19 and is supposed to be a hallmark of the new NRA.

20 In fact, the NRA was the lead defendant at the jury
21 trial. Its counsel dominated the proceedings from the
22 defense side, both in substance and in time and expended
23 great effort to try to persuade the jurors that they should
24 not hold the NRA liable for the acts of a few rogue
25 executives and vendors. The jury rejected those arguments.

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1 The fact that the verdict form, which all parties
2 had a role in crafting, by the way, did not require separate
3 verdicts on the dozens, if not more, allegations of specific
4 mismanagement of charitable funds, as well as the evidence
5 of board-level support for the wrongdoers, attacks against
6 whistleblowers and overall lax oversight on financial
7 matters does not make the verdict any less damning as to the
8 NRA as an entity nor does it support the NRA's post-trial
9 declamations of vindication, which apparently drew derisive
10 laughter and objections from members at the NRA's annual
11 meeting, that the NRA or, more particularly, its senior
12 leadership was a hapless victim of a few bad apples in
13 management. Moreover, the NRA's press release discussing
14 the jury's verdict was misleading and, at times, wholly
15 inaccurate.

16 In my view, the record showed not only misconduct
17 by individual officers and employees, but also failures by
18 the board of directors and its committees to properly
19 supervise the expenditure of the NRA's charitable assets and
20 to react quickly and decisively once questions about
21 financial management arose, which really began as early as
22 the 1990s, though more specifically and pointedly in 2018.

23 This is not the first case in which that type of
24 long-term entrenchment of management and directors has
25 created blind spots in oversight. The evidence showed that

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1 a number of prominent board members reacted principally with
2 the goal of protecting Mr. LaPierre and his team rather than
3 with protecting the NRA itself against financial
4 mismanagement.

5 I recognize the NRA operated, at the time and
6 today, in a sometimes hostile political environment, and
7 there thus may be an initial instinct to protect an
8 otherwise very effective and popular Executive Vice
9 President from attack, regardless of the merits. That
10 instinct is particularly acute when both the Executive Vice
11 President and the leaders of the Board have been in place
12 and mutually supporting each other for many years. In doing
13 so, however, the NRA, through its board and senior
14 management, abandoned the basic blocking and tackling of
15 ensuring that the financial resources of the association are
16 being responsibly spent. Here, instead, management and
17 certain leading board members, when called to account for
18 the NRA's problems, went on the attack, including against
19 legally protected whistleblowers. As the saying goes, "If
20 all you have is a hammer, everything looks like a nail."

21 That said, the principal question is not whether
22 mistakes have been made in the past but, instead, whether
23 they are likely to recur absent the specific relief
24 requested by the Attorney General; principally, the
25 imposition of a court-appointed monitor or consultant.

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1 The fact that the NRA still seems to find it
2 difficult to take accountability for its past problems is
3 concerning but not dispositive.

4 First, although the reforms instituted by the NRA
5 since 2018 are far from perfect and remain a work in
6 progress, they are meaningful. I was persuaded that the
7 employees now in charge of compliance efforts -- in
8 particular, Executive Vice President Hamlin; the Treasurer,
9 Ms. Rowling; the Compliance Officer, Mr. Mensinger; the
10 Internal Auditor, Mr. Medrano -- are serious, independent,
11 skilled people with a spine to stand up to power, as
12 Ms. Rowling and her brave colleagues so clearly demonstrated
13 as effective and undaunted whistleblowers. I was also
14 impressed by the testimony of Mr. Bachenberg and
15 Mr. Vaughan, two new board officers that I believe will be
16 watchful for any backsliding on compliance with internal
17 controls.

18 Other changes I find encouraging are: The NRA
19 Compliance Commitments to Members document that Mr. Cotton
20 has suggested be implemented going forward, some personnel
21 changes in key committees, and the progress on resolving
22 internal-control issues identified by the independent
23 auditor, Aprio, whose most recent management letter showed
24 that prior issues had been resolved and no new issues had
25 been identified.

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1 Is that a perfect record that gives the Court a
2 hundred percent confidence? No. The NRA was slow to
3 reform, despite warning signs as early as 2003. There
4 remain leaders on key board committees who, while they do
5 seem smart and earnest, are difficult to disentangle from
6 their role as overseers while long-running and blatant
7 violations of NRA policy and New York law was rampant at the
8 highest levels of the organization and who were also
9 intimately involved, in some cases, in ill-considered and
10 wasteful efforts to avoid accountability, including the
11 disastrous decision to pursue bankruptcy to avoid
12 accountability rather than simply righting the ship as best
13 they could.

14 So where does that leave us? Taking all of the
15 evidence into account, I find that the State's principal
16 requested relief of a court-appointed monitor or consultant
17 to oversee the NRA and report back to the Court and the
18 Attorney General is not the correct result in this case.

19 Again, the principal question is whether such
20 relief, which is undoubtedly expensive and disruptive, is
21 necessary to avoid a recurrence of illegal conduct. Here,
22 most of the defalcations were specific to personal spending,
23 reimbursement and vendor relationships. While these
24 violations are serious and not to be taken lightly, they are
25 also severable from the core activities of the organization

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1 and, frankly, easier to fix and simpler.

2 On top of that, it cannot be ignored that the
3 environment surrounding the NRA has changed significantly
4 and, in my view, unalterably since the events that led to
5 this litigation and the jury's verdict have come to light.
6 From a financial perspective, the NRA is under a microscope,
7 not only from the Attorney General and from the Court, but
8 also from its own members and its donors. The notion that
9 the NRA would simply lapse back into the -- in the absence
10 of ongoing court supervision, to a place where internal
11 controls are routinely overridden by entrenched leaders
12 immune from scrutiny by a compliant and equally entrenched
13 board of directors, with executives and their families
14 jetting off on private planes to lavish locales, seems
15 wildly unrealistic; possible but not probable.

16 I'm also persuaded that a monitor or consultant,
17 despite best intentions, will be time-consuming, disruptive
18 and will impose significant costs on the NRA without
19 corresponding benefits. Moreover, such relief would result
20 inevitably in a long, awkward and potentially
21 speech-chilling governmental intrusion on the affairs of the
22 organization, despite the Attorney General's best efforts to
23 carve sensitive topics out of the monitor's remit.

24 To echo a similar point made in my dissolution
25 decision earlier in the action, while First Amendment

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1 concerns would not necessarily foreclose imposing a monitor
2 in appropriate circumstances, they are a legitimate concern
3 to be taken into account in making the discretionary
4 decision whether to impose a court-appointed monitor. It
5 should be, in my view, the last resort, not the first.

6 A note of caution, however, for any who view this
7 as, sort of, a green light:

8 In the event of future wrongdoing, which likely
9 would come back to this Court in some form, the NRA's
10 failure to police itself in the future will be viewed in the
11 very unfavorable light of this case, with a potentially grim
12 result for those involved and the NRA itself.

13 But the monitorship is not the end of the remedy
14 story, however. I remain open to considering specific and
15 targeted changes to the NRA that may be necessary to provide
16 reasonable assurance, in the absence of a monitor, against
17 lapses once the bright lights of this litigation have
18 dimmed.

19 As to the NRA itself, the evidence presented at
20 trial suggests that there remain vestiges of the regime that
21 presided over the period of unlawful behavior, that still do
22 not recognize their role in failing to identify and rectify
23 the wrongdoing. While the NRA members recently flexed their
24 democratic muscles to promote reform efforts, current NRA
25 leadership continues to place decisive authority in the

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1 hands of those who did not take a strong hand against
2 improper behavior and chose instead to close ranks behind a
3 leader, despite ample evidence of extraordinary misconduct.

4 Among the specific forms of relief that I am
5 considering and seek post-trial briefing on and, hopefully,
6 negotiation, since many of these really should be viewed as
7 in the NRA's interest in any event, are the following:

8 1. Incorporating some or all of the "NRA
9 Compliance Commitments to Members" document into a court
10 order.

11 2. Expanding, for at least three years, the path
12 to candidacy for board elections; specifically, limiting the
13 hegemony of the Nominating Committee for enough board cycles
14 to cover all 76 board members. The events of the most
15 recent election suggest that NRA members are looking for new
16 voices but that the current rules erect barriers to getting
17 on the ballot. While those rules generally make sense in a
18 well-functioning organization, here the evidence suggests
19 they have led to significant and unhealthy entrenchment of
20 both management and the board, making it exceedingly
21 difficult for new voices to have any impact except in very
22 small numbers. One option would be to mandate that, for the
23 next three elections at least, any proposed candidate who
24 meets certain minimum qualifications would be on the ballot,
25 full stop, with no need to rally for hundreds or thousands

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1 of signatures.

2 3. Retaining a compliance consultant for three
3 years to work with the NRA's in-house Compliance Officer and
4 staff to make recommendations to the board. This
5 consultant, unlike the one sought in this case, would be
6 selected by the NRA and would not report to the Court or the
7 Attorney General. The consultant would be advisory only and
8 would provide an independent perspective to the board for
9 implementing the Court's directives as well as best
10 practices.

11 4. Changing the Audit Committee so that it would
12 not include people, at least not -- at the very least not --
13 as chair or co-chair, that served on the committee during
14 the violations found in this action. Despite the changes in
15 some of the members, there is an argument that there needs
16 to be a sharp break with the past -- sharper break with the
17 past -- than is reflected in the most recent committee
18 appointments. Similar decisions could be made with respect
19 to other key committees, as well.

20 5. Creating more protections for the Compliance
21 Officer position recently created. One option would be to
22 provide that the position be for a term of three years, at
23 least initially, subject to removal only for good cause upon
24 a vote of the board.

25 And finally, a bylaw referendum for members to

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1 consider at the next annual meeting on whether to reduce the
2 size of the board or reorganize it to create a smaller, more
3 focused group to oversee the key operations and finances of
4 the organization. I've seen references to other nonprofit
5 boards that have a very large advisory section and then a
6 much smaller, tighter group that focuses on the core
7 operational and financial aspects of the company. I think
8 I've heard from a number of experts in this case that a
9 board of this size, while it may make sense for fund-raising
10 in some ways, is just not a manageable group to make
11 decisions on micro issues and, also, to provide close
12 oversight.

13 Those are the types of the remedies -- types of
14 remedies -- I have considered. However, since this trial
15 was really not focused on that and has focused almost
16 entirely on the monitor remedy, I would like to give the
17 parties an opportunity to discuss this, to consider it
18 carefully, and any other ideas they might have for what I
19 hope would be a consent order, but if not a consent order,
20 their arguments back and forth on the various things that
21 I've suggested or proposed or thought about. Ultimately, it
22 will be up to me whether to order them and what to do, but I
23 would like more precise guidance on the points that I've
24 made.

25 Next, as to the individual defendants; first,

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1 Mr. LaPierre:

2 I find that barring Mr. LaPierre from any fiduciary
3 position as an officer or director of the NRA or any entity
4 under the NRA's direct control for a period of ten years is
5 appropriate and reasonably related to protecting against a
6 recurrence of past violations of law.

7 First, a bar on fiduciary service at the NRA is
8 appropriate, despite Mr. LaPierre's statements that he does
9 not have any intention of seeking employment or re-election
10 as a director or officer. Other courts have noted that a
11 defendant's voluntary disclaimer of an intent to violate the
12 law is simply not enough to forego a remedy such as this
13 one.

14 The overarching goal of the NRA's course correction
15 and this Court's decision today is to establish a clear
16 break from past practices that the jury determined violated
17 New York law. It is difficult for me to conceive of
18 anything more undermining of that goal than permitting the
19 NRA to rehire Mr. LaPierre or elect him as a director.

20 (Continued on next page.)
21
22
23
24
25

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1 Which it does not seem inclined to do and which he
2 did not seem inclined to seek. But since those inclinations
3 are not binding, the Court feels compelled to incorporate
4 them into a binding order, otherwise Mr. LaPierre would be
5 free to seek such positions which would undermine the core
6 of what this litigation and the jury's verdict was about.

7 I don't find that a lifetime bar is appropriate.
8 Although such a ban is not prohibited by the statute,
9 neither is it referenced. Instead the statute talks about a
10 period of years set by the Court. Thus, I conclude that the
11 ban should last for a period of ten years. I think that's
12 an appropriate length of time and will give the NRA plenty
13 of time to chart a course well distant from the one that
14 lead to this litigation.

15 I do take seriously the First Amendment concerns
16 expressed by Mr. LaPierre and his counsel. I don't believe
17 however that barring Mr. LaPierre from any fiduciary
18 position at the NRA for a period of time years, as
19 specifically authorized by the statute, violates his
20 constitutional rights. This bar does not restrict Mr.
21 LaPierre from associating with the NRA as a member or
22 private advocate or raising funds or any of those things.
23 It does not in any way restrict his speech. This relief
24 instead is about the privilege, not the right, to serve as
25 an officer or director of a New York not-for-profit

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1 corporation, which is subject to the restrictions imposed by
2 state law, which includes the possibility of being barred
3 from service for a period determined by the Court after
4 finding violations of the law. Mr. LaPierre has had the due
5 process provided by The Constitution by having this matter
6 tried before a jury, which found that he violated his
7 statutory duties and separately found that there was cause
8 for his removal from office.

9 With respect to Mr. Frazer, the relief requested by
10 the Attorney General is denied. A result that is consistent
11 in my view with the jury's verdict that he was not subject
12 to removal for violations of the statute. Although
13 Mr. Frazer had some involvement in the violations, according
14 to the jury, the evidence at trial and the jury's conclusion
15 that he caused no harm to the NRA persuades me that he had
16 an ancillary role that has been further narrowed by
17 subsequent events, including his replacement as general
18 counsel.

19 I found his testimony to be persuasive and the
20 testimony of others that he, you know, by in large performed
21 his duties in good faith and his continuation in the role of
22 secretary seems to be a match for the skill set that he has
23 shown. And I believe that ordering anything further against
24 him would be punitive rather than reasonably calculated to
25 prevent future violations. I think Mr. Frazer's continued

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1 involvement with the NRA is not a danger to the
2 organization. And so consistent with the jury's verdict,
3 the relief sought in this trial against Mr. Frazer is
4 denied. That's the conclusion of my decision.

5 I would like -- You know, I don't know whether the
6 parties feel like they need findings of fact, conclusions of
7 law. I feel like I've gone through my analysis in enough
8 detail to give you what you need. I'll listen if you feel
9 like you need more. But what I'm particularly interested in
10 is for you to take a week or two to talk about the conduct
11 portion of a final judgment. Listen carefully to what I've
12 talked about. You know I'll make my decision in the end. I
13 think that the NRA, if it is serious about turning the
14 corner here, would be well served to negotiate a reasonable
15 consent order that accommodates and accomplishes what it
16 claims to desire, which is an NRA 2.0 representing a clear
17 break from the past.

18 So, with that I wish you -- I thank you first of
19 all for your excellent work. Wish you well. And is two
20 weeks enough time for you to submit? I'm seeing lots of
21 shaking of heads. It is August after all. Why doesn't --
22 Well, I'm going to give you -- how about I give you a week
23 to meet and confer on the process? You know, it will either
24 be, you know, competing proposed versions of a judgment. If
25 you feel like you need to do post-trial briefs to go through

PROCEEDINGS

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1 it in more detail, I'll probably permit that as long as it
2 is accompanied by proposed judgements that are very
3 specific. And again extra points if you come up with a
4 consent order and judgment.

5 Any questions?

6 MS. ROGERS: Not from the NRA, your Honor. The
7 schedule sounds reasonable. We think we could do it.

8 MS. CONNELL: Your Honor, may I just have some
9 clarity on the expectations of the Court. So there is a
10 week to meet and confer. Would you expect a joint letter or
11 something at the end of that?

12 THE COURT: Yes.

13 MS. CONNELL: Thank you.

14 THE COURT: Setting out the specific schedule. You
15 know, if you have to have two competing versions of that,
16 you can. But, you know, take some time to think about it,
17 all right. Anything else?

18 MR. CORRELL: Your Honor, do you contemplate the
19 individual defendants having involvement in that process?

20 THE COURT: I don't think so. You know, the
21 specific wording of the relief as to Mr. LaPierre, I tried
22 to be specific about it. I don't think it is going to be
23 hard to write. The proposed order at the end of it will
24 include the relief against Mr. LaPierre. So, I would
25 certainly suggest you be involved, at least to the extent of

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1 trying to work out language with the government as to what
2 that order will say.

3 MR. CORRELL: Thank you.

4 THE COURT: And I would hew as close as you can to
5 what I said. If you have other ideas, I'm sure you'll
6 present them.

7 MS. CONNELL: Your Honor, just to be clear. Is it
8 the Court's intention that we have one final judgment as
9 against all defendants or should the State proceed, we were
10 thinking about proceeding with regard to the individual
11 defendants, doing judgments and then working with the NRA?

12 THE COURT: Well, it's one case and we usually have
13 one judgment in each case otherwise we have to have a
14 severance order of the claims against each individual. No.
15 I would rather have one order.

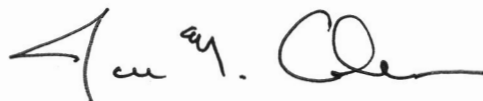
16 MS. CONNELL: Thank you, your Honor.

17 THE COURT: Thanks everybody.

18
19 ooOoo

20
21 (Court reporter certifications appear on following
22 page.)

23 SO ORDERED DECISION (INTERIM)
24 AFTER PHASE 2 BACK TRIAL

25 

HON. JOEL M. COHEN
J.S.C.

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1
2 CERTIFIED to be a true and accurate transcript of the
3 Non-Jury Phase II Trial Proceedings of July 15, 2024 through
4 and inclusive of July 29, 2024, Index No. 451625/2020, in the
5 Matter of:

6 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
7 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

8 Plaintiff,

9 -against-

10 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
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12 and JOSHUA POWELL,

13 Defendants.

14 ALAN F. BOWIN, CSR, RMR, CRR
15 Official Court Reporter

16 BONNIE PICCIRILLO
17 Official Court Reporter

18 MICHELE PANTELOUKAS
19 Official Court Reporter

20 LORI SACCO
21 Official Court Reporter

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